THE GENERAL STATUTES OF
NORTH CAROLINA

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ANNOTATED

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1995 CUMULATIVE SUPPLEMENT
VOLUME 19

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THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1995 CUMULATIVE SUPPLEMENT

Volume 19

Chapters 137 through 143B

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

D. S. Tussey, K. S. Mawyer, K. J. Kennedy
and F. J. Payne

Annotated through 457 S.E.2d 524. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Cumulative Supplement to Volume 19 contains the general laws of a permanent nature enacted by the General Assembly through the 1995 Regular Session, which are within the scope of such volume, and brings up to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1995 Regular Session affecting Chapters 137 through 143B of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 340, p. 364.
North Carolina Court of Appeals Reports through Volume 118, p. 737.
South Eastern Reporter 2nd Series through Volume 457, p. 524.
Federal Reporter 3rd Series through Volume 53, p. 349.
Federal Supplement through Volume 882, p. 1100.
Federal Rules Decisions through Volume 160, p. 664.
Bankruptcy Reports through Volume 181, p. 677.
Supreme Court Reporter through Volume 115, p. 2020.
North Carolina Law Review through Volume 73, p. 1760.
Wake Forest Law Review through Volume 30, p. 426.
Campbell Law Review through Volume 17, p. 163.
Duke Law Journal through Volume 44, p. 1049.
North Carolina Central Law Journal through Volume 21, p. 178.
Opinions of the Attorney General.

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VOLUME 19

Chapter 137.

Rural Rehabilitation.

Article 2.

North Carolina Rural Rehabilitation Corporation.

Sec.
137-31.5. Audit.

Sec.
137-35. Loans to be made through State Board of Education.

ARTICLE 2.

North Carolina Rural Rehabilitation Corporation.

§ 137-31.5. Audit.

The operations of the Corporation shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1953, c. 724, s. 5; 1983, c. 913, s. 26.)

§ 137-35. Loans to be made through State Board of Education.

The said loans shall be made through and with the assistance of the State Board of Education in the following manner:

(1) As applications for loans are made, the Director of Auxiliary Services and the Director of Vocational and Technical Education, State Department of Public Instruction, will select and recommend rural communities in which vocational agricultural and home economics buildings should be constructed or equipped.

(2) The Local Government Commission will then determine whether the county or school district can, under the Constitution, borrow funds necessary for the construction or equipment of such buildings.

(3) The State Board of Education will then pass upon, and approve or disapprove, the project from the standpoint of the State educational system.

(4) Such projects as have been approved will be submitted to the finance committee of the board of directors of North Carolina Rural Rehabilitation Corporation for final approval.

(5) Upon such final approval the North Carolina Rural Rehabilitation Corporation will deliver to the State Board of Education the funds which are to be advanced.

(6) Said funds will be loaned by the State Board of Education according to the same rules and regulations and legal requirements as those under which the State Literary Fund is now administered.

(7) Said loans will be repayable in ten equal annual installments and will bear interest at four percent (4%) per annum, payable annually, semiannually, or quarterly, as the State Board of Education shall determine.

(8) All loans made by the State Board of Education from such funds so advanced by the Rural Rehabilitation Corporation shall be evidenced by notes payable to the order of the Rural Rehabilitation Corporation and upon completion of said loan, such notes shall be delivered, without further liability upon the State Board of Education, to the Rural Rehabilitation Corporation and a proper receipt taken therefor. (1939, c. 241, s. 2; 1993, c. 180, s. 7.)

Chapter 138.

Salaries, Fees and Allowances.

§ 138-5. Per diem and allowances of State boards, etc.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 324, s. 23.32, provides: "Notwithstanding G.S. 138-5(a)(1), those members of the North Carolina Vocational Rehabilitation Advisory Council, the Statewide Independent Living Council, and the Commission for the Blind, who are unemployed or who must forfeit wages from other employment to attend council or commission meetings or to perform related duties, may receive compensation not to exceed fifty dollars ($50.00) a day for attending these meetings or for performing related duties, as authorized in Sections 105 and 705 of P.L. 102-569, the Rehabilitation Act of 1973, 42 U.S.C. § 701 et seq., as amended. This compensation is instead of the compensation specified in G.S. 138-5(a)(1). Reimbursement for subsistence and travel expenses is as specified in G.S. 138-5."

Chapter 139.

Soil and Water Conservation Districts.

Article 1.

General Provisions.

Sec.
139-3. Definitions.
139-4. Powers and duties of Soil and Water Conservation Commission generally.
139-8. Powers of districts and supervisors.

ARTICLE 1.

General Provisions.

§ 139-3. Definitions.

Wherever used or referred to in this Chapter, unless a different meaning clearly appears from the context:

(1) "Agency of this State" includes the government of this State and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the State.

(2) "A qualified voter" includes any person qualified to vote in elections by the people under the Constitution of this State.

(3) "Environmental Management Commission" or "State Environmental Management Commission" means the Environmental Management Commission of the State of North Carolina, or the board, body or commission succeeding to its principal functions, or in whom shall be vested by law the powers herein granted to the said Environmental Management Commission.

(4) "Commission" or "Soil and Water Conservation Commission" means the Soil and Water Conservation Commission created by G.S. 143B-294.

(5) "District" or "soil and water conservation district" means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with the provisions of this Chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(6) "Due notice" means notice given by posting the same at the courthouse door and at three other public places in the county, including those where it may be customary to post notices concerning county or municipal affairs generally, not less than 10 days before the date of the event of which notice is being given. At any hearing held pursuant to such a notice at the time and place designated in such a notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

(7) "Government" or "governmental" includes the government of this State, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(8) The terms "land occupier" or "occupier of land," and "landowner" or "owner of land" include any person, firm or

corporation who shall hold title to or shall have contracted to purchase any lands lying within a soil and water conservation district organized under the provisions of this Chapter.

(9) "Nominating petition" means a petition filed under the provisions of G.S. 139-6 to nominate candidates for the office of supervisor of a soil and water conservation district.

(10) Repealed by Session Laws 1993, c. 391, s. 1, effective July 1, 1993.

(11) "Petition" means a petition filed under the provisions of Article 1 of this Chapter for the creation of a soil and water conservation district.

(12) "State" means the State of North Carolina.

(13) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this Chapter.

(14) Repealed by Session Laws 1993, c. 391, s. 1, effective July 1, 1993.

(15) "United States" or "agencies of the United States" includes the United States of America, the Soil Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(16) Repealed by Session Laws 1993, c. 391, s. 1, effective July 1, 1993.

(17) A "watershed improvement project" means a project of watershed improvement (whether involving flood prevention, drainage improvement, water supply, soil and water conservation, recreation facilities, fish and wildlife habitat, or other related purposes, singly or in combination) which is undertaken:

a. Repealed by Session Laws 1993, c. 391, s. 1, effective July 1, 1993.

b. By a soil and water conservation district under the provisions of Article 1 of Chapter 139 of the General Statutes or any local act granting similar powers.

c. By a drainage district under the provisions of Chapter 156 of the General Statutes or any local act granting similar powers.

d. By a county that is carrying out a county watershed improvement program under the provisions of Article 3 of Chapter 139 of the General Statutes or any local act granting similar powers.

e. By any combination of the foregoing, acting as joint sponsors of a watershed improvement program.

f. By any watershed, drainage or flood control project planned or carried out by the Soil Conservation Service, Tennessee Valley Authority or the Army Corps of Engineers.

(18) A "watershed improvement work" means a single feature or facility or portion of a watershed improvement project, such as a water retarding or impoundment structure for one or more authorized watershed purposes or a section of improved stream channel or the land treatment measures associated with a water retarding structure. (1937, c. 393, s. 3; 1947, c. 131, s. 2; 1959, c. 781, s. 4; 1965, c. 582, s. 1;

1967, c. 987, s. 1; 1971, c. 1138, s. 1A; 1973, c. 1262, s. 38; 1993, c. 391, s. 1; 1995, c. 519, s. 5.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted "Soil and Water Conservation Commission created by G.S. 143B-294" for "agency created in G.S. 139-4" in subdivision (4).

§ 139-4. Powers and duties of Soil and Water Conservation Commission generally.

(a) through (c) Repealed by Session Laws 1973, c. 1262, s. 38.

(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil and water conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this Chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To coordinate the programs of the several soil and water conservation districts organized hereunder so far as this may be done by advice and consultation.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this State, in the work of such districts.

(5) To disseminate information throughout the State concerning the activities and programs of the soil and water conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.

(6) Upon the filing of a petition signed by all of the district supervisors of any one or more districts requesting a change in the boundary lines of said district or districts, the Commission may change such lines in such manner as in its judgment would best serve the interests of the occupiers of land in the area affected thereby.

(7) To receive, review and approve or disapprove applications for planning assistance under the provisions of Public Law 566 (83rd Congress, as amended), and recommend priorities on such applications.

(8) To supervise and review small watershed work plans pursuant to G.S. 139-41.2 and 139-47.

(9) To create, implement, and supervise the Agriculture Cost Share Program for Nonpoint Source Pollution Control pursuant to G.S. 143-215.74.

(10) To review and approve or disapprove the application of a district supervisor for a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control as provided by G.S. 139-8(13).

(e) A member of the Commission may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control if:

(1) The member does not vote on the application or attempt to influence the outcome of any action on the application; and
(2) The application is approved by the Secretary of Environment, Health, and Natural Resources. (1937, c. 393, s. 4; 1947, c. 131, s. 3; 1953, c. 255; 1957, c. 1374, s. 1; 1959, c. 781, s. 5; 1961, c. 746, s. 2; 1965, c. 582, s. 2; c. 932; 1971, c. 396; 1973, c. 1262, s. 38; 1981, c. 326, s. 1; 1995, c. 519, s. 1.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, added subdivisions (d)(9) and (d)(10), and subsection (e).

§ 139-8. Powers of districts and supervisors.

(a) A soil and water conservation district organized under the provisions of this Article shall constitute a governmental subdivision of this State, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers in addition to others granted in other sections of this Chapter:

(1) To conduct surveys and investigations relating to the character of soil erosion and floodwater and sediment damages, and to the conservation, utilization, and disposal of water, the development of water resources, and the preventive and control measures and works of improvement needed, to publish the results of such surveys and investigations, and to disseminate information concerning such preventive and control measures and works of improvement.

(2) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, utilization, and disposal of water and development of water resources within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection (a), subdivision (3) of G.S. 139-2, on lands owned or controlled by this State or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupiers of such lands or the necessary rights or interest in such lands.

(3) To cooperate, or enter into agreements with, and within the limits or appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupiers of land within the district, in the carrying on of erosion control and prevention operations and works of improvement for flood prevention or the conservation, utilization, and disposal of water and development of water resources within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this Chapter.

(4) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and

provisions of this Chapter; and to sell, lease, or otherwise dispose of its property or interests therein in furtherance of the purposes and the provisions of this Chapter.

(5) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water and the development of water resources.

(6) To construct, improve, operate, and maintain such structures, works and projects as may be necessary or convenient for the performance of any of the operations authorized in this Chapter, including watershed improvement structures, works, and projects as well as any other structures, works, and projects which the district is authorized to undertake.

(7) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention or the conservation, utilization and disposal of water and development of water resources, within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to bring such plans and information to the attention of occupiers of lands within the district.

(8) To act as agent for the United States, or any of its agencies, in connection with the acquisition, construction, operation, or administration of any project for soil conservation, erosion control, erosion prevention, flood prevention, or for the conservation, utilization, and disposal of water and development of water resources, or combinations thereof, within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this State or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations, except that all forest tree seedlings shall be obtained insofar as available from the Department of Environment, Health, and Natural Resources in cooperation with the United States Department of Agriculture.

(9) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this Chapter, to carry into effect its purposes and powers.

(10) As a condition to the extending of any benefits under this Chapter to, or the performance of work upon, any lands not

owned or controlled by this State or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreement or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages therein.

(11) No provision with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

(12) Nothing contained in this Chapter shall authorize or allow the withdrawal of water from a watershed or stream except to the extent and degree now permissible under the existing common and statute law of this State; nor to change or modify such existing common or statute law with respect to the relative rights of riparian owners or others concerning the use or disposal of water in the streams of this State; nor to authorize a district, its officers or governing body or any other person, firm, corporation (public or private), body politic or governmental agency to utilize or dispose of water except in the manner and to the extent permitted by the existing common and statute law of this State.

(13) To assist the Commission in the implementation and supervision of the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to G.S. 143-215.74 and to assist in the implementation and supervision of any other program intended to protect water quality administered by the Department of Environment, Health, and Natural Resources by providing technical assistance, allocating available grant monies, and providing any other assistance that may by required or authorized by any provision of federal or State law.

(b) A district supervisor may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control if:

1. The district supervisor does not vote on the application or attempt to influence the outcome of any action on the application; and
2. The application is approved by the Commission. (1937, c. 398, s. 8; 1939, c. 341; 1959, c. 781, s. 7; 1969, c. 711, s. 1; 1973, c. 1262, s. 38; 1977, c. 771, s. 4; 1989, c. 727, s. 218(93); 1995, c. 519, ss. 2, 3.)

Effect of Amendments. — Session Laws 1995, c. 519, ss. 2 and 3, effective July 29, 1995, added the subsection (a) designation, and added subdivision (a)(13) and subsection (b).

Chapter 140.

State Art Museum; Symphony and Art Societies.

Article 1B.

North Carolina Museum of Art.

Sec.
140-5.13. Board of Trustees — establishment; members; selection; quorum; compensation; officers; meetings.

ARTICLE 1B.

North Carolina Museum of Art.

§ 140-5.13. Board of Trustees — establishment; members; selection; quorum; compensation; officers; meetings.

(a) It is the duty of the Department of Cultural Resources to develop policy and to establish and enforce standards for resources, services, and programs involving the arts and the cultural aspects of the lives of the citizens of North Carolina. To attain these objectives, there is hereby established within the Department of Cultural Resources the Board of Trustees of the North Carolina Museum of Art.

(b) **(Applicable until January 1, 1997)** The Board of Trustees of the North Carolina Museum of Art shall consist of 28 members, chosen as follows:

(1) The Governor shall appoint twelve members, one from each congressional district in the State in accordance with G.S. 147-12(3b);
(2) The North Carolina Art Society, Incorporated, shall elect four members;
(3) The North Carolina Museum of Art Foundation, Incorporated, shall elect four members;
(4) The Board of Trustees of the North Carolina Museum of Art shall elect four members;
(5) The General Assembly shall appoint four members, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President of the Senate in accordance with G.S. 120-121;
(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 49.

All regular appointments or elections except those by the General Assembly shall be for terms of six years, except that each member shall serve until his successor is chosen and qualifies. No person may be appointed or elected to more than two consecutive terms of six years. All regular appointments by the General Assembly shall be for the then current legislative term, and no appointee of the General Assembly may be appointed to more than two consecutive terms of two years.

(b) **(Applicable January 1, 1997)** The Board of Trustees of the North Carolina Museum of Art shall consist of 28 members, chosen as follows:

§ 140-5.13(b) is set out twice. See notes.

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(1) The Governor shall appoint twelve members, one from each congressional district in the State in accordance with G.S. 147-12(3b);

(2) The North Carolina Art Society, Incorporated, shall elect four members;

(3) The North Carolina Museum of Art Foundation, Incorporated, shall elect four members;

(4) The Board of Trustees of the North Carolina Museum of Art shall elect four members;

(5) The General Assembly shall appoint four members, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;

(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 49.

All regular appointments or elections except those by the General Assembly shall be for terms of six years, except that each member shall serve until his successor is chosen and qualifies. No person may be appointed or elected to more than two consecutive terms of six years. All regular appointments by the General Assembly shall be for the then current legislative term, and no appointee of the General Assembly may be appointed to more than two consecutive terms of two years.

(c) Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. All other vacancies occurring in the regular membership of the Board of Trustees prior to the expiration of a term shall be filled by the same authority and in the same manner as the vacating member was chosen, and the successor member so chosen shall serve for the remainder of the unexpired term of the vacating member.

(d) All initial appointments and elections to the Board of Trustees shall be made on July 1, 1980, or as soon as feasible thereafter except as provided in this subsection, and the terms of all except the legislative appointees shall expire on June 30, 1983, or June 30, 1986, as the case may be. In order to establish regularly overlapping terms, initial appointments and elections to the Board of Trustees shall be made as follows:

(1) Four members at large shall be appointed by the Governor for initial terms of three years and four members at large shall be appointed by the Governor for initial terms of six years.

(2) One member shall be elected by the North Carolina Art Society, Incorporated, for an initial term of three years and two members shall be elected by that Society for initial terms of six years.

(3) One member shall be elected by the North Carolina Museum of Art Foundation, Incorporated, for an initial term of three years and two members shall be elected by that Foundation for initial terms of six years.

(4) One member shall be elected by the Art Commission prior to July 1, 1980, for an initial term of three years and two members shall be elected by that Commission for initial terms of six years. Upon the expiration of the terms of those

three members, their successors shall be elected by the Board of Trustees of the North Carolina Museum of Art.

(5) Three members shall be elected by the State Art Museum Building Commission to serve until the termination of that Commission or until June 30, 1983, whichever shall first occur. Upon the termination of the terms of those three members, should such termination occur prior to June 30, 1983, their successors shall be elected as follows: one by the North Carolina Art Society, Incorporated, one by the North Carolina Museum of Art Foundation, Incorporated, and one by the Board of Trustees of the North Carolina Museum of Art; the terms of the successor members so elected shall expire on June 30, 1983. On July 1, 1983, or as soon as feasible thereafter, the successors of these three members shall be elected for terms of six years, as follows: one by the North Carolina Art Society, Incorporated, one by the North Carolina Museum of Art Foundation, Incorporated, and one by the Board of Trustees of the North Carolina Museum of Art.

(6) The initial appointments by the General Assembly shall serve until June 30, 1983. Subsequent appointments shall be for two-year terms commencing July 1, 1983, and biennially thereafter.

(7) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 51.

Every vacancy occurring in the initial membership of the Board of Trustees prior to the expiration of a term of office shall be filled by the same authority and in the same manner as the vacating member was chosen and the successor member so appointed shall serve for the remainder of the unexpired term of the vacating member.

(e) Any member of the Board of Trustees may be removed from office by the authority that appointed or elected that member for misfeasance, malfeasance, or nonfeasance in office. In the case of an appointment made by the Governor, removal shall be made in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(f) A public officer who is appointed or elected to serve on the Board of Trustees shall be deemed to serve thereon as a trustee ex officio and his duties as a trustee shall be deemed additional duties of his primary public office.

(g) The Board of Trustees shall have a chairman, a vice-chairman, and such other officers as the Board deems necessary. The chairman shall be designated by the Governor from among the members of the Board. The vice-chairman shall be elected by and from among the members of the Board. The chairman and vice-chairman shall be chosen for terms of two years or for so long as they are members of the Board, whichever is the shorter period. The Director of the North Carolina Museum of Art shall serve as Secretary to the Board of Trustees and shall attend all meetings, except when the Board is considering issues related to the Director's performance of duties.

(h) The Board of Trustees shall meet at least once in each quarter. The Board may hold special meetings at any time and place within the State at the call of the chairman. The chairman may call a special meeting at his discretion, and he shall call a special meeting upon the written request of a majority of the authorized membership of the Board of Trustees.

(i) A majority of the authorized membership of the Board of Trustees shall constitute a quorum for the transaction of business.

(j) Members of the Board of Trustees who are officers or employees of State agencies or institutions shall receive from funds available to the Department of Cultural Resources subsistence and travel allowances at the rates authorized by G.S. 138-6. All other members of the Board of Trustees shall receive from funds available to the Department of Cultural Resources per diem and travel and subsistence allowances at the rates authorized by G.S. 138-5.

(k) All clerical and administrative services required by the Board of Trustees shall be supplied by the office of the Director of the North Carolina Museum of Art. (1979, 2nd Sess., c. 1306, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 49-52; 1987, c. 842, ss. 1, 2; 1991, c. 756, s. 35; 1995, c. 490, s. 8.)

Subsection (b) Set Out Twice — The first version of subsection (b) set out above is applicable until January 1, 1997. The second version of subsection (b) set out above is applicable January 1, 1997.

Editor's Note. —

Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (b)(5). For the applicability of this amendment, see editor's note.

Chapter 140A.

State Awards System.

Sec.
140A-3. Annual awards to natives living outside State.

§ 140A-3. Annual awards to natives living outside State.

Awards may be made annually to native-born North Carolinians, living outside of North Carolina, for preeminent accomplishment in not more than two of the above fields of creative endeavor. (1961, c. 1143, s. 3; 1991, c. 131, s. 1.)

Chapter 142.

State Debt.

Article 1.

General Provisions.

Sec.
142-12. State bonds exempt from taxation.
142-12.1. Effect of federal taxation of interest income on state or local bonds on issuance thereof; continuation of state tax exemptions.

Article 3A.

Refunding Bonds.

Sec.
142-29.5. Authorization of refunding obligations.
142-29.6. Sale of refunding obligations and provisions thereof.

ARTICLE 1.

General Provisions.

§ 142-12. State bonds exempt from taxation.

Bonds and other evidences of indebtedness issued by the State are exempt from State taxation to the extent provided in the act authorizing their issuance. If the act authorizing the issuance of the instruments does not address exemption from taxation, then they are exempt from taxation by the State or any of its subdivisions, except for inheritance or gift taxes, income taxes on the gain from the transfer of the instruments, and franchise taxes. Unless the act authorizing the issuance of the instruments provides otherwise, the interest on the instruments is not subject to taxation as income. (1852, c. 10, s. 4; R.C., c. 90, s. 5; Code, s. 3565; Rev., s. 5022; C.S., s. 7410; 1995, c. 46, s. 14.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995 and applicable to obligations issued on or after that date, rewrote this section.

§ 142-12.1. Effect of federal taxation of interest income on state or local bonds on issuance thereof; continuation of state tax exemptions.

(a) It is hereby found, determined and declared that:

(1) From time to time bills have been introduced in the United States Congress providing that the interest on all or certain state and municipal bonds or debt obligations, whether issued by or on behalf of states or local governmental units, be subject to federal income taxation; and

(2) The Tax Reform Act of 1986 requires, in certain circumstances, the inclusion in the gross income of the recipient thereof of interest on bonds or obligations issued by or on behalf of certain state or local governmental units for purposes of federal income tax which heretofore would have been exempt from federal income taxation.

(b) Nothing in any act, general, special or private, shall be deemed to limit or restrict the right of the State or any agency or instrumentality thereof, or The University of North Carolina or any agency or instrumentality thereof, or any county, city, town, special district, authority or other political subdivision or local governmental unit or any agency or instrumentality thereof, to issue, or have issued on its behalf, bonds or obligations the interest income on which is or may be subject to federal income taxation.

(c) The interest on any of these bonds or obligations shall maintain its existing exemption from State income taxation, or other taxation, if any, notwithstanding that the interest may be or become subject to federal income taxation as a result of legislative action by the federal government.

(d) If the provisions of this section are inconsistent with the provisions of any other laws, the provisions of this section shall be controlling. (1987, c. 587, ss. 1-4; 1995, c. 41, s. 10.)

Editor's Note. —

Session Laws 1995, c. 41, s. 11, provides in part: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1995 amendment, effective for taxable years beginning on or after January 1, 1995, in subsection (c) substituted "of these" for the first occurance of "such", deleted "including but not limited to, the tax on intangible personal property now imposed by the State" following "if any", and substituted "the" for the second occurance of "such."

ARTICLE 3A.

Refunding Bonds.

§ 142-29.5. Authorization of refunding obligations.

By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell, from time to time, refunding obligations for the purpose of refunding outstanding obligations as and to the extent authorized by this Article. The principal amount of any such refunding obligations shall not exceed the principal amount of outstanding obligations to be refunded unless (i) the refunding results in an aggregate debt service savings and (ii) the increase in the principal amount issued does not create cash-in-hand available for new capital improvements.

Refunding obligations issued pursuant to the provisions of this Article shall not be subject to limitations imposed by any other law including, without limitation, the other Articles of this Chapter. (1935, c. 445, s. 5; 1985 (Reg. Sess., 1986), c. 823, s. 1; 1993, c. 542, s. 13.)

Editor's Note. — Session Laws 1993, c. 542, which amended this section, in s. 15 sets forth various provisions for the interpretation of the act, including, among others, liberal construction. Subsection (e) of s. 15 is a severability clause.

§ 142-29.6. Sale of refunding obligations and provisions thereof.

(a) The bonds shall bear such date or dates, shall be serial or term bonds, shall mature in such amounts and at such times, not exceeding 40 years from their date or dates, and shall bear interest at such rate or rates, which may vary from time to time as hereinafter authorized, and which may be represented, in part, by evidences of additional interest, and the bonds may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices and under such terms and conditions, all as may be fixed by the State Treasurer with the consent of the Council of State.

(b) The bonds shall be signed on behalf of the State by the Governor or shall bear his facsimile signature; shall be signed by the State Treasurer or shall bear his facsimile signature; and shall bear the Great Seal of the State or a facsimile thereof impressed or imprinted thereon; and interest coupons, if any, shall bear a facsimile of the signature of the State Treasurer. If the bonds shall bear the facsimile signatures of the Governor and the State Treasurer, the bonds shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on any bonds or coupons (if any) cease to be such officer before the delivery of the bonds, such signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery and any bond or coupon may bear the facsimile signatures of such persons who at the actual time of the execution of such bond or coupon shall be the proper officers to sign any bond or coupon although at the date of such bond or coupon such persons may not have been such officers. The form and denomination of the bonds and any coupons, including the provisions with respect to registration of the bonds, shall be as the State Treasurer may determine in conformity with this Article; provided, however, that nothing in this Article shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds, under the provisions of the Registered Public Obligations Act as well as this Article.

(c) Subject to determination by the Council of State as to the manner in which the bonds shall be offered for sale, whether at public or private sale and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell the bonds, at one time or from time to time, at a price equal to, greater than or less than the face amount of the bonds as the State Treasurer may determine to be in the best interests of the State.

All expenses incurred in the preparation, sale and issuance of the refunding obligations shall be paid by the State Treasurer from the proceeds of any such refunding obligations or any other available moneys.

(d)(1) By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money at such rate or rates of interest as the State Treasurer may determine to be in the best interests of the State, which may vary from time to time as hereinafter authorized, and to execute and issue bond anticipation notes or notes of the State for the same, but only in the following circumstances and under the following conditions:

a. For anticipating the sale of any bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of such bonds;

b. For the payment of interest upon or any installment of principal of any of the bonds then outstanding, if there shall not be sufficient funds in the State Treasury with which to pay the interest or installment of principal as they respectively become due; or

c. For the renewal of any loan evidenced by bond anticipation notes or notes herein authorized.

(2) Funds derived from the sale of bonds may be used in the payment of any bond anticipation notes issued under this Article. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of such bonds.

Nothing in this Article shall be construed as a limitation on the duration of any deposit in trust for the retirement of outstanding obligations which shall not have matured and which shall not be then redeemable or, if then redeemable, shall not have been called for redemption.

(e) Coupons (if any) and any evidences of additional interest appertaining to bonds and notes shall, after the maturity of such coupons or evidences of additional indebtedness, be receivable in payment of all taxes, debts, dues, licenses, fines and demands of any kind whatever due the State.

(f) All refunding obligations shall be exempt from all State, county and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except for inheritance and gift taxes, income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the refunding obligations is not subject to taxation as income.

(g) Refunding obligations, coupons (if any) and any evidences of additional indebtedness are hereby made securities in which all public officers, agencies and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such refunding obligations, coupons (if any) and any evidences of additional indebtedness are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(h) The full faith, credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on refunding obligations, coupons (if any) and any evidences of additional indebtedness to the same extent as pledged to the outstanding obligations being refunded. To the extent additional security has been pledged to outstanding obligations, such additional security may, at the discretion of the State, be continued and similarly pledged to the appropriate refunding obligations, coupons (if any) and any evidences of additional indebtedness. (1935, c. 445, s. 6; 1985 (Reg. Sess., 1986), c. 823, s. 1; 1995, c. 46, s. 15.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995 and applicable to obligations issued on or after that date, rewrote subsection (f).

Chapter 143.

State Departments, Institutions, and Commissions.

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ARTICLE 1.

Executive Budget Act.

§ 143-1. Scope and definitions.

Editor's Note. — Session Laws 1983, c. 761, s. 257; 1983 (Reg. Sess., 1984), c. 971, s. 5 and c. 1034, s. 252; 1985, c. 479, s. 228; 1985 (Reg. Sess., 1986), c. 1014, s. 238 and c. 1018, s. 18; 1987, c. 738, s. 235 and c. 830, s. 119; 1987 (Reg. Sess., 1988), c. 886, s. 4, c. 1086, s. 166, c. 1100, s. 41 and c. 1101, s. 15; 1989, c. 500, s. 125 and c. 752, s. 163; 1989 (Reg. Sess., 1990), c. 1066, s. 147 and c. 1074, s. 39; Session Laws 1991, c. 689, s. 350; Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 177, Session Laws 1993, c. 321, s. 319, Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43, Session Laws 1994, Extra Session, c. 24, s. 69, and Session Laws 1995, c. 324, s. 28.1, provide that the provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in the act by reference.

Session Laws 1993, c. 321, s. 22, effective July 1, 1993, as amended by Session Laws 1994, Extra Session, c. 24, s. 55, creates the Budget Practices Study Commission, an independent commission to study the effectiveness of the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes. The Budget Practices Study Commission shall examine the current content, interpretation, and application of the Executive Budget Act, and shall address the particular topics set forth in the act. The Budget Practices Study Commission shall report its findings and recommendations to the 1995 General Assembly upon its convening.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

§ 143-3.2. Issuance of warrants upon State Treasurer; delivery of warrants and disbursements for non-State entities.

(a) The State Controller shall have the exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer. All warrants upon the State Treasurer shall be signed by the State Controller, who before issuing them shall determine the legality of payment and the correctness of the accounts. All warrants issued for non-State entities shall be delivered by the appropriate agency to the entity's legally designated recipient by United States mail or its equivalent, including electronic funds transfer.

When the State Controller finds it expedient to do so because of a State agency's size and location, the State Controller may authorize a State agency to make expenditures through a disbursing account with the State Treasurer. The State Controller shall authorize the Judicial Department and the General Assembly to make expenditures through such disbursing accounts. All disbursements made to non-State entities shall be delivered by the appropriate agency to the entity's legally designated recipient by United States mail or its equivalent, including electronic funds transfer. All deposits in these disbursing accounts shall be by the State Controller's warrant. A copy of each voucher making withdrawals from these disbursing accounts and any supporting data required by the State Controller shall be forwarded to the Office of the State Controller monthly or as otherwise required by the State Controller. Supporting data for a voucher making a withdrawal from one of these disbursing accounts to meet a payroll shall include the amount of the payroll and the employees whose compensation is part of the payroll.

A central payroll unit operating under the Office of the State Controller may make deposits and withdrawals directly to and from a disbursing account. The disbursing account shall constitute a revolving fund for servicing payrolls passed through the central payroll unit.

The State Controller may use a facsimile signature machine in affixing his signature to warrants.

(b) The State Treasurer may impose on an agency a fee of fifteen dollars ($15.00) for each check drawn against the agency's disbursing account that causes the balance in the account to be in overdraft or while the account is in overdraft. The financial officer shall pay the fee from non-State or personal funds to the General Fund to the credit of the miscellaneous non-tax revenue account by the agency. (1955, c. 578, s. 2; 1957, c. 269, s. 2; 1961, c. 1194; 1969, c. 844, s. 12; 1979, 2nd Sess., c. 1137, s. 37; 1981, c. 859, s. 47.1; c. 884, s. 10; 1985, c. 290, s. 2; 1985 (Reg. Sess., 1986), c. 1024, s. 4; 1989 (Reg. Sess., 1990), c. 1074, s. 17; 1991, c. 542, s. 5; 1995, c. 507, s. 27.4.)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added "delivery of warrants and disbursements for non-State entities" in the catchline of this section; and in subsection (a) added the last sentence of the first paragraph, and the third sentence of the second paragraph.

§ 143-3.3. Assignments of claims against State.

Editor's Note. —

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143-3.5. Coordination of statistics; fiscal analysis required for any bill proposed by a State agency that affects the budget.

(a) It shall be the duty of the Director, through the Office of State Budget and Management and the Office of State Planning to coordinate the efforts of governmental agencies in the collection, development, dissemination and analysis of official economic, demographic and social statistics pertinent to State budgeting. The Director shall:

(1) Prepare and release the official demographic and economic estimates and projections for the State;

(2) Conduct special economic and demographic analyses and studies to support statewide budgeting;

(3) Develop and coordinate cooperative arrangements with federal, State and local governmental agencies to facilitate the exchange of data to support State budgeting;

(4) Compile, maintain, and disseminate information about State programs which involve the distribution of State aid funds to local governments including those variables used in their allocation;

(5) Develop and maintain in cooperation with other State and local governmental agencies, an information system providing comparative data on resources and expenditures of local governments; and

(6) Report major trends that influence revenues and expenditures in the State budget in the current fiscal year and that may influence revenues and expenditures over the next five fiscal years.

Every fiscal analysis prepared by the Director or the Office of State Budget and Management addressing the State budget outlook shall encompass the upcoming five-year period. Every fiscal analysis prepared by the Director or the Office of State Budget and Management addressing the impact of proposed legislation on the State budget shall estimate the impact for the first five fiscal years the legislation would be in effect. To minimize duplication of effort in collecting or developing new statistical series pertinent to State planning and budgeting, including contractual arrangements, State agencies must submit to the Director proposed procedures and funding requirements.

(b) Any bill proposed by an executive or judicial department, agency, institution, board, or commission that affects the State budget shall be accompanied by a fiscal analysis. The fiscal analysis shall estimate the impact of the legislation on the State budget for the first five fiscal years the legislation would be in effect.

(c) This section shall not apply to the General Assembly, any of its committees and subcommittees, the Legislative Research Commission, the Legislative Services Commission, or any other committee or commission in the legislative branch. (1979, 2nd Sess., c. 1137, s. 41; 1991, c. 689, s. 341; 1993 (Reg. Sess., 1994), c. 769, s. 11.1(b).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, added "fiscal analysis required for any bill proposed by a State agency that affects the budget" to the section catchline; inserted the subsection (a) and (c) designations, inserted "and the Office of State Planning" in the first sentence of subsection (a), substituted "Director" for "Office" near the beginning of the second sentence of subsection (a), added subdivision (a)(6) and made related changes, and added subsection (b).

§ 143-3.6: Expired

Editor's Note. — This section expired at the end of 1993-1994 fiscal year.

§ 143-3.7. Transfer from General Fund for local fire protection.

Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 11A(c), amended Session Laws 1989 (Reg. Sess., 1990), c. 1069, s. 31, by deleting the last sentence regarding the expiration of amendments to the General Statutes by Session Laws 1989 (Reg. Sess., 1990), c. 1069, if the legislature did not appropriate or transfer funds. Session Laws 1989 (Reg. Sess., 1990), s. 31, as amended by Session Laws 1995, c. 507, s. 11A(c), provides: "Section 23 of this act does not apply to the 1990 automobile rate filing made pursuant to Article 36 of Chapter 58 of the General Statutes. Section 27 of this act shall expire at the end of the 1993-1994 fiscal year and Section 28 shall become effective upon the expiration of Section 27."

§ 143-6.1. Information from private organizations receiving State funds; information from State departments and agencies providing State funds.

Editor's Note. —

Session Laws 1995, c. 324, s. 11, provides: "All grantees receiving Domestic Violence grants from the Department of Administration shall meet the financial statement filing requirements of G.S. 143-6.1, regardless of the amount of their grants."

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

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Private home health agencies which receive funds from the Division of Adult Health, Department of Environment, Health and Natural Resources, are subject to the audit requirements of this section. See opinion of the Attorney General to John C. Hunter, Gen. Counsel, Dept. of Environment, Health and Natural Resources, 60 N.C.A.G. 82 (1991).

§ 143-10.3. Strategic planning process.

(a) The Director, through the Office of State Budget and Management, shall establish and implement a strategic planning process for State government. The strategic planning process shall be designed to produce statewide goals, and State agencies shall develop agency goals and objectives that are consistent with those statewide goals.

The Director, in conjunction with State agencies, shall prepare and apply performance measures and indicators of program impact, and shall require agency performance to be reviewed periodically to determine progress toward statewide goals and agency goals. Results of the strategic planning process and agency performance reviews shall be reflected in the budget document proposed by the Governor, as provided in G.S. 143-10.4.

The performance measures and indicators of program impact for each agency shall be based upon clear, unambiguous goals that are established by that agency. The Director shall be responsible for developing and implementing statewide comprehensive performance measures and indicators of program impact in a standardized format applicable across agency lines.

(b) If a member of the Council of State does not agree with the performance measures, departmental operations plans, and indicators of program impact developed in accordance with this section, G.S. 143-10.4, and G.S. 143-10.5, that apply to the member's department, the member of the Council of State shall submit to the Director of the Budget a statement of specific objections to the program measures and indicators of program impact. The Director of the Budget shall submit the statement to the General Assembly in accordance with G.S. 143-11(6). (1993 (Reg. Sess., 1994), c. 769, s. 11.1(c).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.6, made this section effective July 1, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 143-10.4. Departmental operations plans.

The Director, through the Office of State Budget and Management and in conjunction with State agencies, shall have prepared biennially in the even-numbered years, a comprehensive operations plan for each department, agency, and institution, for which the Director may recommend an appropriation of State funds in the next biennial period. The operations plans shall address the statewide and agency goals contained in the strategic plans developed in accordance with G.S. 143-10.3. The operations plans shall provide objectives, activities, and supporting statistics for the current biennium and for the following three biennial periods. The operations plans shall also provide clear, unambiguous performance measures and outcome indicators, which measures and indicators shall be used for program evaluation and shall be reported in the Governor's biennial budget submission.

The Director shall provide unified planning and budgeting instructions to the departments, agencies, and institutions for use in developing operations plans and biennial budgets. (1993 (Reg. Sess., 1994), c. 769, s. 11.1(c).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.6, made this section effective July 1, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 143-10.5. Development of performance measures for major programs.

(a) The Director of the Budget, through the Office of State Budget and Management and through State agencies, departments, and institutions, shall develop performance measures for the major programs for each State agency, department, and institution. These performance measures shall be developed as part of the biennial comprehensive plan and shall serve as the basis for the development of the biennial budget, beginning with the 1995-97 fiscal biennium.

(b) The Director shall institute a standard process for developing program performance measures and for evaluating performance results, uniform performance measurement terms, and a standardized format for presentation.

(c) The program performance measurement system shall include:

(1) A description of the key performance measures for the program. The performance measures should include: program efficiency or unit cost, outputs or program activity, and outcomes or performance results, with emphasis on the use of program outcome measures.

(2) Identification and description of the current level of performance.

(3) Targets for the desired level of performance.

(4) Identification of future performance measures that should be developed and a time frame for development.

(5) A methodology for regular monitoring of departmental, agency, and institutional performance in relation to the measure.

(6) A methodology for assessing programs that have achieved the desired performance targets through innovative management actions.

(d) The Director of the Budget shall prepare a comprehensive plan for the implementation of a performance measurement system and shall present the plan to the General Assembly at the same time the 1995-97 fiscal biennium budget is submitted to the General Assembly. With regard to programs for which it is anticipated that performance measures will not be fully developed by that date, the Director of the Budget shall submit to the General Assembly at that time, a plan and timetable for the development and implementation of performance measures. In developing the plan, consideration shall be given to any recommendations and reports of the Governmental Accounting Standards Board. In the event the Director shall conclude that it is not feasible to develop performance measures for particular programs, the Director shall set forth detailed reasons for the conclusion in the report.

(e) Beginning in 1996, the Director of the Budget shall report to the General Assembly no later than February 1 in odd-numbered years and no later than April 1 in even-numbered years on:

(1) The status of the development of the program performance measurement system.

(2) The programs that have not achieved the desired level of performance and the reasons performance targets were not achieved.

(3) The programs that have achieved performance targets through management innovation. (1993 (Reg. Sess., 1994), c. 769, s. 11.1(c).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.6, made this section effective July 1, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 143-10.6. Responsibilities of other State agencies.

All State agencies, departments, and institutions shall cooperate with the Director of the Budget to assist in the implementation of strategic planning, departmental planning, and performance budgeting. The Director of the Budget may assign any responsibility to any State agency, department, or institution as appropriate or needed to implement strategic planning, departmental planning, and performance budgeting. (1993 (Reg. Sess., 1994), c. 769, s. 11.1(c).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.6, made this section effective July 1, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 143-10.7. Review of department forms and reports.

The Director, through the Office of State Budget and Management, shall review on three-year cycles all internal and external forms and reports in use by State departments and institutions to confirm whether these forms and reports continue to be needed. If, during the review process, it is determined that these forms and reports are no longer necessary, or that they duplicate other forms or reports either in whole or in part, the Director shall have these forms and reports modified or eliminated. All departments shall provide the Director with copies of all forms and reports used, together with any additional information necessary for the review of these reports. (1995, c. 324, s. 10.2.)

Editor's Note. — Session Laws 1995, c. 324, s. 28.5, made this section effective July 1, 1995.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

§ 143-11. Survey of departments.

(a) On or before the fifteenth day of December, biennially in the even-numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend State funds, in the interest of economy and efficiency, and of obtaining a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment, and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as representing their views. The budget report shall contain a complete and itemized plan of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receives or may receive for use and expenditure any State funds, in accordance with the classification of funds and accounts adopted by the State Controller, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each line item of the proposed expenditures, the budget shall show in separate parallel columns:

(1) Proposed expenditures and receipts for each fiscal year of the biennium;
(2) The certified budget for the preceding fiscal year;
(3) The currently authorized budget for the preceding fiscal year;
(4) Actual expenditures and receipts for the most recent fiscal year for which actual expenditure information is available; and
(5) Proposed increases and decreases.

Revenue and expenditure information shall be no less specific than the two-digit level in the State Accounting System Chart of Accounts as prescribed by the State Controller. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital improvements.

(b) The Director shall accompany the budget with:

(1) A budget message supporting his recommendations and outlining a financial policy and program for the ensuing biennium. The message will include an explanation of increase or decrease over past expenditures, a discussion of proposed changes in existing revenue laws and proposed bond issues, their purpose, the amount, rate of interest, term, the requirements to be attached to their issuance and the effect such issues will have upon the redemption and annual interest charges of the State debt.
(2) State Controller reports including:
    a. An itemized and complete financial statement for the State at the close of the last preceding fiscal year ending June 30.
    b. A statement of special funds.
(2a) A statement showing the itemized estimates of the condition of the State treasury as of the beginning and end of each of the next two fiscal years.
(3) A report on the fees charged by each State department, bureau, division, board, commission, institution, and agency during the previous fiscal year, the statutory or regulatory authority for each fee, the amount of the fee,

when the amount of the fee was last changed, the number of times the fee was collected during the prior fiscal year, and the total receipts from the fee during the prior fiscal year.

(4) A statement showing the State Board of Education's request, in accordance with G.S. 115C-96, for sufficient funds to provide textbooks to public school students.

(5) A proposal for expenditure of the funds in the Repairs and Renovations Reserve Account, which is established in G.S. 143-15.3A. The Director shall consider the data from the Facilities Condition and Assessment Program in the Office of State Construction when establishing priorities for the proposed expenditure of these funds.

(6) Statements of the objections of members of the Council of State received pursuant to G.S. 143-10.3(b) to the performance measures, departmental operations plans, and indicators of program impact prepared in accordance with G.S. 143-10.3, 143-10.4, and 143-10.5.

(7) A list of the budget requests of members of the Council of State that are not included in the proposed budget.

It shall be a compliance with this section by each incoming Governor, at the first session of the General Assembly in his term, to submit the budget report with the message of the outgoing Governor, if he shall deem it proper to prepare such message, together with any comments or recommendations thereon that he may see fit to make, either at the time of the submission of the said report to the General Assembly, or at such other time, or times, as he may elect and fix.

The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget. (1925, c. 89, s. 12; 1929, c. 100, s. 11; 1983, c. 717, s. 54; 1985 (Reg. Sess., 1986), c. 955, s. 62; c. 1024, ss. 11-13; 1989, c. 752, s. 49; 1991, c. 542, s. 6; 1991 (Reg. Sess., 1992), c. 900, s. 81(b); 1993, c. 321, s. 17.1(d); 1993 (Reg. Sess., 1994), c. 769, s. 11.1(d); 1995, c. 324, s. 10(a).)

Editor's Note. —

Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 81(b), amended this section, effective July 8, 1992, applicable to all budget requests beginning with the budget request for the 1993-95 fiscal biennium, by adding subdivision (4).

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

This section was amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 11.1(d) in the coded bill drafting format provided by § 120-20.1 The act added new subdivisions (5) and (6) without taking account of subdivision (5) added by Session Laws 1993, c. 321, s. 17.1(d). The new subdivisions have been redesignated as (6) and (7) at the direction of the Revisor of Statutes.

Session Laws 1993, c. 321, s. 17.1(d), amended this section, effective beginning with the General Fund credit balance at the end of the 1992-93 fiscal year, by adding subdivision (5).

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 324, s. 10(b), provides for the use of the performance budget format developed by the Director of the Budget, and for the Office of State Budget and Management to report and make recommendations to the General Assembly regarding the effectiveness of performance budgeting.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, inserted "in accordance with G.S. 143-10.3, 143-10.4, and 143-10.5" and "of funds and accounts" in the fourth sentence of the first paragraph, substituted "fiscal" for "appropriation" twice in the fifth sentence of the first paragraph and once in subdivision (2a) of the second paragraph, substituted "improvements" for "outlays" in the last sentence of the first paragraph, and added subdivisions (5) and (6) (now (6) and (7)) of the second paragraph.

The 1995 amendment, effective July 1, 1995, added the subsection (a) and (b) designations; and in subsection (a) deleted "in accordance with G.S. 143-10.3, 143-10.4, and 143-10.5" following "itemized plan" in the fourth sentence, in the fifth sentence added "line" preceding "item", and deleted "the amount expended for the last preceding fiscal year, for the current fiscal year, and the increase or decrease" at the end of that sentence, added subdivisions (a)(1) through (a)(5), and added the next to last sentence.

§ 143-15.1. Current Operations Appropriations Act; General Fund Financial Model.

(a) The General Assembly shall enact the Current Operations Appropriations Act by June 15 of odd-numbered years and by June 30 of even-numbered years in which a Current Operations Appropriations Act is enacted. The Current Operations Appropriations Act shall state the amount of General Fund appropriations availability upon which the General Fund budget is based. The statement of availability shall list separately the beginning General Fund credit balance, General Fund revenues, and any other components of the availability amount.

The General Fund operating budget appropriations, including appropriations for local tax reimbursements and local tax sharing, for the second year in a Current Operations Appropriations Act that contains a biennial budget shall not be more than two percent (2%) greater than the General Fund operating budget appropriations for the first year of the biennial budget.

(b) The General Assembly shall review the results of the General Fund Financial model, a computer-based financial model used to project long-term expenditure and revenue trends under various simulations, in its budget deliberations. The model shall be maintained and, from time to time, updated by the Fiscal Research Division of the General Assembly. (1991, c. 689, s. 346; 1991 (Reg. Sess., 1992), c. 993, s. 11; 1993 (Reg. Sess., 1994), c. 769, s. 11.3.)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, added "General Fund Financial Model" to the section catchline, inserted the subsection (a) designation, and added subsection (b).

§ 143-15.2. Use of General Fund credit balance.

The State Controller shall reserve up to one-fourth of any unreserved credit balance, as determined on a cash basis, remaining in the General Fund at the end of each fiscal year to the Savings Reserve Account as provided in G.S. 143-15.3, unless that would result in the Savings Reserve Account having funds in excess of five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax-sharing funds; in that case, only funds sufficient to reach the five percent (5%) level shall be reserved. The State Controller shall also reserve the greater of (i) one-fourth of any unreserved credit balance, as determined on a cash basis, remaining in the General Fund and (ii) three percent (3%) of the replacement value of all State buildings supported from the General Fund, at the end of each fiscal year to the Repairs and Renovations Reserve Account as provided in G.S. 143-15.3A. The General Assembly may appropriate that part of the anticipated General Fund credit balance not expected to be reserved to the Savings Reserve Account or the Repairs and Renovations Reserve Account only for capital improvements or other one-time expenditures. As used in this section, the term "unreserved credit balance" means the credit balance amount, as determined on a cash basis, before funds are reserved by the Controller to the Savings Reserve Account or the Repairs and Renovations Reserve Account pursuant to G.S. 143-15.3 and G.S. 143-15.3A. (1991, c. 689, s. 346; 1991 (Reg. Sess., 1992), c. 812, s. 7(a), (c); c. 993, s. 12; 1993, c. 321, s. 17.1(a); 1993 (Reg. Sess., 1994), c. 591, s. 5(a); 1995, c. 324, s. 5.2(a).)

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective June 30, 1994, in the first and second sentences inserted "unreserved," and added the last sentence.

The 1995 amendment, effective June 30, 1995, in the second sentence substituted "greater" for "lesser" and "three percent (3%)" for "one and one-half percent (1.5%)".

§ 143-15.3. Savings Reserve Account.

(a) There is established a Savings Reserve Account as a restricted reserve in the General Fund. The State Controller shall reserve to the Savings Reserve Account one-fourth of any unreserved credit balance remaining in the General Fund at the end of each fiscal year until the account contains funds equal to five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax-sharing funds. If the balance in the Savings Reserve Account falls below this level during a fiscal year, the State Controller shall reserve to the Savings Reserve Account for the following fiscal years up to one-fourth of any unreserved credit balance remaining in the General Fund at the end of each fiscal year until the account again equals five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax-sharing funds. As used in this section, the term "unreserved credit balance" means the credit balance amount, as determined on a cash basis, before funds are reserved by the Controller to the Savings Reserve Account or the Repairs and Renovations Reserve Account pursuant to this section and G.S. 143-15.3A.

(b) The Director may not use funds in the Savings Reserve Account unless the use has been approved by an act of the General Assembly. (1991, c. 689, s. 346; 1991 (Reg. Sess., 1992), c. 812, s. 7(b), (c); c. 900, s. 11; c. 993, s. 13; 1993, c. 321, ss. 17.1(c), 21.2; 1993 (Reg. Sess., 1994), c. 591, s. 5(b); c. 769, s. 7.27(b).)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 23, provides that the funds appropriated to the Department of Human Resources for the 1995-96 fiscal year have been reduced in anticipation of the receipt of federal funds, that, notwithstanding this section, the Director of the Budget may use funds available to the Department if these funds are not received or if only a portion of them is received, and that the Director of the Budget shall report to the Joint Legislative Commission on Governmental Operations prior to any transfer.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 591, s. 5, effective June 30, 1994, in subsection (a), in the last sentence deleted "that part of" following "means," substituted "balance amount" for "balance," substituted "before funds are reserved by the Controller to" for "not already reserved to," and added at the end "pursuant to this section and G.S. 143-15.3A."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 7.27(b), effective July 1, 1994, deleted the last two sentences of subsection (b), relating to the General Assembly's intent that the State's liability for the deferral of the twelfth month of teacher payroll be eliminated.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 7.27(a) provides for the use of funds appropriated for a Reserve for Paydate Restoration to restore the twelfth month of teacher payroll for school teachers paid from the General Fund, and states that in no event shall any allotments exceed the actual General Fund requirement.

§ 143-15.3A. Repairs and Renovations Reserve Account.

(a) There is established a Repairs and Renovations Reserve Account as a restricted reserve in the General Fund. The State Controller shall reserve to the Repairs and Renovations Reserve Account the greater of (i) one-fourth of any unreserved credit balance as determined on a cash basis, remaining in the General Fund and (ii) three percent (3%) of the replacement value of all State buildings supported from the General Fund, at the end of each fiscal year. As used in this section, the term "unreserved credit balance" means the credit balance amount, as determined on a cash basis, before funds are reserved by the Controller to the Savings Reserve Account or the Repairs and Renovations Reserve Account pursuant to this section and G.S. 143-15.3.

(b) The funds in the Repairs and Renovations Reserve Account shall be used only for the repair and renovation of State facilities and related infrastructure that are supported from the General Fund. Funds from the Repairs and Renovations Reserve Account shall be used only for the following types of projects:

(1) Roof repairs and replacements;
(2) Structural repairs;
(3) Repairs and renovations to meet federal and State standards;

(4) Repairs to electrical, plumbing, and heating, ventilating, and air-conditioning systems;
(5) Improvements to meet the requirements of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., as amended;
(6) Improvements to meet fire safety needs;
(7) Improvements to existing facilities for energy efficiency;
(8) Improvements to remove asbestos, lead paint, and other contaminants, including the removal and replacement of underground storage tanks;
(9) Improvements and renovations to improve use of existing space;
(10) Historical restoration;
(11) Improvements to roads, walks, drives, utilities infrastructure; and
(12) Drainage and landscape improvements.

Funds from the Repairs and Renovations Reserve Account shall not be used for new construction or the expansion of the footprint of an existing facility unless required in order to comply with federal or State codes or standards.

The Director of the Budget shall not use funds in the Repairs and Renovations Reserve Account unless the use has been approved by an act of the General Assembly. (1993, c. 321, s. 17.1(b); c. 561, s. 16; 1993 (Reg. Sess., 1994), c. 591, s. 5(c); 1995, c. 324, s. 5.2(b).)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 35 amends Session Laws 1993, c. 561, s. 22, to refer to the 1994-95 fiscal year.

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 5.3, provides for the allocation of funds for repairs and renovations.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective June 30, 1994, in subsection (a), in the third sentence deleted "that part of" following "means," substituted "balance amount" for "balance," substituted "before funds are reserved by the Controller to" for "not already reserved to," and added "pursuant to this section and G.S. 143-15.3" at the end.

The 1995 amendment, effective June 30, 1995, in the second sentence of subsection (a) added "the greater of (i)", "as determined on a cash basis", and "and (ii) three percent (3%) of the replacement value of all State buildings supported from the General Fund"; and in subsection (b) added the last sentence in the introductory language in the first paragraph, subdivisions (b)(1) through (b)(12), and the sentence following subdivision (b)(12).

§ 143-16.3. No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation.

Editor's Note. —

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1994, Extra Session, c. 24, s. 72 provides that section 9 of Chapter 321 of Session Laws 1993, which permitted deviation by the Director of the Budget from this section, does not apply to Session Laws 1994, Extra Session, c. 24.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 18.2 provides: "Of the funds appropriated to the Department of Community Colleges in Chapter 321 of the 1993 Session Laws for the State Board Reserve, forty-six thousand dollars ($46,000) shall be allocated to fund the additional costs associated with the automated central cataloging of library books.

"Notwithstanding G.S. 143-16.3, the State Board may use up to three hundred thousand dollars ($300,000) from the State Board Reserve to fund the community colleges leadership development programs that were a part of the State Board Reserve to fund the community colleges leadership development programs that were a part of the State Board's budget request to the 1994 Regular Session of the 1993 General Assembly."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 27.18 provides: "Notwithstanding G.S. 143-16.3, the Divisions of Parks and Recreation and of Coastal Management of the Department of Environment, Health, and Natural Resources may apply to the North Carolina Recreation and Natural Heritage Trust, and other State and federal agencies for funds to acquire Occoneechee Mountain, Bird Island, and additional land at Hammocks Beach State Park."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 26.8D, provides: "Notwithstanding G.S. 143-16.3, the Divisions of Parks and Recreation and of Coastal Management of the Department of Environment, Health, and Natural Resources may apply to the Natural Heritage Trust Fund and to other State and federal agencies for funds to acquire Occoneechee Mountain, Bird Island, and additional land at Hammocks Beach State Park."

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 9, provides: "For the 1995-96 fiscal year only, the provisions of G.S. 143-16.3 do not apply to the Total Quality Management Program in the Office of the Governor."

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

§ 143-18. Unencumbered balances to revert to treasury; capital appropriations excepted.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 23.20, provides for the funding of treatment and education programs for children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior, identified as a Class in the case of Willie M., et al v. Hunt, et al.; and s. 23.20(h) provides that no funds shall be expended on placement and services for Willie M. Class members except funds specifically appropriated by the General Assembly for the placement and services of Willie M. Class members, or for which they would otherwise be eligible, that this limitation shall not preclude the use of unexpended Willie M. funds from prior fiscal years to cover current or future needs of the Willie M. program, and that these Willie M. expenditures shall not be subject to the requirements of G.S. 143-18.

§ 143-23. All maintenance funds for itemized purposes; transfers between objects or line items.

(a) All appropriations now or hereafter made for the maintenance of the various departments, institutions and other spending agencies of the State, are for the (i) purposes or programs and (ii) objects or line items enumerated in the itemized requirements of such departments, institutions and other spending agencies submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission, as amended by the General Assembly. The function of the Advisory Budget Commission under this subsection applies only if the Director of the Budget consults with the Commission in preparation of the budget.

(a1) No transfers may be made between objects or line items in the budget of any department, institution, or other spending agency; however, with the approval of the Director of the Budget, a department, institution, or other spending agency may spend more than was appropriated for an object or line item if the overexpenditure is:

(1) In a purpose or program for which funds were appropriated for that fiscal period and the total amount spent for the purpose or program is no more than was appropriated for the purpose or program for the fiscal period;

(2) Required to continue a purpose or program because of unforeseen events, so long as the scope of the purpose or program is not increased;

(3) Required by a court, Industrial Commission, or administrative hearing officer's order or award or to match unanticipated federal funds;

(4) Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or

(5) Required to call out the National Guard.

The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division of the Legislative Services Office, and the State Auditor the reason if the amount expended for a purpose or program is more than the amount appropriated for it from all sources. If the overexpenditure was authorized under subdivision (2) of this subsection, the Director of the Budget shall identify in the report the unforeseen event that required the overexpenditure.

(a2) Funds appropriated for salaries and wages are also subject to the limitation that they may only be used for:

(1) Salaries and wages or for premium pay, overtime pay, longevity, unemployment compensation, workers' compensation, temporary wages, moving expenses of employees, payment of accumulated annual leave, certain awards to employees, tort claims, and employer's social security, retirement, and hospitalization payments;

(2) Contracted personal services if (i) the contract is for temporary services or special project services, (ii) the term of the contract does not extend beyond the fiscal year, (iii) the contract does not impose obligations on the State after the end of the fiscal year; and (iv) the total of all overexpenditures for contracted personal services approved in a program for a fiscal year does not exceed the greater of five hundred thousand dollars ($500,000) or ten percent (10%) of the lapsed salary funds in the program for the fiscal year; and

(3) Uses for which overexpenditures are permitted by subdivisions (3), (4), and (5) of subsection (a1) of this section but the Director of the Budget shall include such use and the reason for it in his quarterly report to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division of the Legislative Services Office, and the State Auditor.

Lapsed salary funds that become available from vacant positions are also subject to the limitation that they may not be used for new permanent employee positions or to raise the salary of existing employees.

(a3) The requirements in this section that the Director of the Budget report to the Joint Legislative Commission on Governmental Operations and the State Auditor shall not apply to expenditures of receipts by entities that are wholly receipt supported, except for entities supported by the Wildlife Resources Fund.

(a4) The State Auditor shall review the report received from the Director of the Budget to ensure that the transfer complied with the intent and the provisions of this Article and shall report the Auditor's findings to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division.

(b) Repealed by Session Laws 1985, c. 290, s. 8.

(c) Transfers or changes as between objects or line items in the budget of the Senate may be made by the President Pro Tempore of the Senate.

(d) Transfers or changes as between objects or line items in the budget of the House of Representatives may be made by the Speaker of the House of Representatives.

(e) Transfers or changes as between objects or line items in the budget of the General Assembly other than of the Senate and House of Representatives may be made jointly by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(f) As used in this section:

(1) "Object or line item" means a budgeted expenditure or receipt in the budget enacted by the General Assembly that is designated by (i) a thirteen-digit code in the 1000-object code series or (ii) an eleven-digit code in all other object code series, in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller.

(2) "Purpose or program" means a group of objects or line items for support of a specific activity outlined in the budget adopted by the General Assembly that is designated by a nine-digit fund code in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller. (1929, c. 100, s. 24; 1981, c. 1127, s. 82; 1985, c. 290, s. 8; c. 479, s. 159; c. 757, s. 183; 1985 (Reg. Sess., 1986), c. 955, s. 72; 1989, c. 752, s. 44; 1991 (Reg. Sess., 1992), c. 812, s. 6(c); c. 900, s. 9(a); 1994, Ex. Sess., c. 24, s. 9(a)-(c); 1993 (Reg. Sess., 1994), c. 769, s. 13; 1995, c. 507, s. 6.3; c. 509, ss. 77, 78.)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 13 amended this section in the coded bill drafting format provided in § 120-20.1. The amendment did not take account of the amendment by the 1994 Extra Session. The section has been set out as above at the direction of the Revisor of Statutes.

Session Laws 1993, c. 321, s. 241, as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 25.23, provides that the Secretary of Human Resources, with the approval of the Office of State Budget and Management, may use any funds appropriated or otherwise available in the 1993-94 fiscal year to conduct a pilot of a subsidy to homes for the aged and disabled and family care homes to support the provision of habilitative and related services needed by developmentally disabled persons who reside there. The Department shall present the results of the pilot to the General Assembly by April 15, 1995.

Session Laws 1994, Extra Session, c. 24, which amended this section, in s. 3 provides: "This act shall be known as the Crime Control and Prevention Act of 1994."

Session Laws 1994, Extra Session, c. 24, which amended this section, in s. 9(d) provides: "Effective from the ratification of this act [March 26, 1994] through June 30, 1994, subsection (a) of this section does not apply to contracts entered into by the Department of Correction for the confinement of prisoners in non-State facilities."

Session Laws 1994, Extra Session, c. 24, which amended this section, in s. 9(e) provides: "The Director of the Budget shall either realign the line items in the proposed supplemental budget for the 1994-95 fiscal year so as to minimize overexpenditures of funds pursuant to G.S. 143-23 or include with the proposed supplemental budget for the 1994-95 fiscal year a statement identifying the line items that have been consistently overexpended pursuant to G.S. 143-23 over the prior two fiscal bienniums."

Session Laws 1994, Extra Session, c. 24, s. 30(e) provides: "Notwithstanding 143-23, and with the approval of the Office of State Budget and Management, the Department of Human Resources may use up to two hundred thousand dollars ($200,000) of the funds appropriated or otherwise available for the 1993-94 fiscal year to begin implementation of this section [relating to the Support Our Students (S.O.S.) Program] prior to July 1, 1994. The amount available to implement this section for the 1994-95 fiscal year shall be reduced by the amount spent prior to July 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 31(e) provides: "Notwithstanding G.S. 143-23, and with the approval of the Office of State Budget and Management, the Department of Human Resources may use up to two hundred thousand dollars ($200,000) of the funds appropriated or otherwise available for the 1993-94 fiscal year to begin implementation of this section [relating to the Family Resource Center Grant Program] prior to July 1, 1994. The amount available to implement this section for the 1994-95 fiscal year shall be reduced by the amount spent prior to July 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1994, Extra Session, c. 24, s. 71 is a severability clause.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 17.5, provides for the reorganization of the Department of Public Instruction by the State Board of Education.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability cause.

Effect of Amendments. — Session Laws 1994, Extra Session, c. 24, s. 9(a), effective March 26, 1994, added the subsection (a2) and (a3) designations; in subsection (a2) added the subdivision (a2)(1), (a2)(2), and (a2)(3) designations; deleted "(i) salaries" from the end of the introductory language of (a2); in (a2)(1) added "Salaries" at the beginning, substituted "moving expenses of employees" for "contracted personal services, moving expenses", and deleted "or (ii) uses" from the end; added subdivision (a2)(2); in subdivision (a2)(3) added "Uses" at the beginning, added "(a1) of this section", and made stylistic changes.

Session Laws 1994, Extra Session, c. 24, s. 9(b) and (c), effective July 1, 1994, added the two sentences at the end of the first paragraph of subsection (a1), following subdivision (5); and in subdivision (a2)(2) added the language beginning "(iv) the total" and ending "for the fiscal year; and", and deleted "and" preceding "(iii)".

The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, in subsection (a1), deleted "and to" following "Governmental Operations" and inserted "and the State Auditor" in the first sentence of the second paragraph and near the end of present subdivision (a2)(3), inserted "and the State Auditor" in present subsection (a3), and added present subsection (a4).

Session Laws 1995, c. 507, s. 6.3, effective July 1, 1995, deleted the first and second sentences following subdivision (a1)(5), regarding the Director of the Budget reporting overexpenditures of a line item to the Joint Legislative Commission on Governmental Operations.

Session Laws 1995 c. 509, ss. 77 and 78, effective July 29, 1995, substituted a period for a semicolon at the end of subsections (c) and (d).

§ 143-23.2. Transfers to Department of Human Resources.

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143-31.4. Non-State match restrictions.

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143-32. Person expending an appropriation wrongfully.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in Bardolph v. Arnold, 112 N.C. App. 190, 435 S.E.2d 109.

§ 143-34. Penalties and punishment for violations.

A refusal to perform any of the requirements of this Article, and the refusal to perform any rule or requirement or request of the Director of the Budget made pursuant to, or under authority of, the Executive Budget Act, shall subject the offender to penalty of two hundred fifty dollars ($250.00), to be recovered in an action instituted either in Wake County Superior Court, or any other county, by the Attorney General for the use of the State of North Carolina, and shall also constitute a Class 1 misdemeanor. If such offender be not an officer elected by vote of the people, such offense shall be sufficient cause for removal from office or dismissal from employment by the Governor upon 30 days' notice in writing to such offender. (1929, c. 100, s. 36; 1993, c. 539, s. 1003; 1994, Ex. Sess., c. 14, s. 61; c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, deleted "and" following "two hundred."

§ 143-34.1. (Effective until December 31, 1997) Positions included in the State's payroll must be approved by the Director of Budget; payment of benefits and other salary-related items must be made from same source as salary; dependent care assistance program authorized; flexible compensation benefits authorized.

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1044, which amended this section, in s. 14(i), as amended by Session Laws 1993, c. 561, s. 42, and by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 7.28A, provides that the amendments to this section by c. 1044 shall expire December 31, 1997.

ARTICLE 3.

Purchases and Contracts.

§ 143-48. (See editor's note) State policy; cooperation in promoting the use of small, minority, physically handicapped and women contractors; purpose; required annual reports.

(a) Policy. — It is the policy of this State to encourage and promote the use of small, minority, physically handicapped and women contractors in State purchasing of goods and services. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage the use of small, minority, physically handicapped and women contractors in achieving the purpose of this Article, which is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Department of Administration.

(b) Reporting. — Every governmental entity required by statute to use the services of the Department of Administration in the purchase of goods and services and every private, nonprofit corporation other than an institution of higher education or a hospital that receives an appropriation of five hundred thousand dollars ($500,000) or more during a fiscal year from the General Assembly shall report to the department of Administration annually on what percentage of its contract purchases of goods and services, through term contracts and open-market contracts, were from minority-owned businesses, what percentage from female-owned businesses, what percentage from disabled-owned businesses, what percentage from disabled business enterprises and what percentage from nonprofit work centers for the blind and the severely disabled. The same governmental entities shall include in their reports what percentages of the contract bids for such purchases were from such businesses. The Department of Administration shall provide instructions to the reporting entities concerning the manner of reporting and the definitions of the businesses referred to in this act, provided that, for the purposes of this act:

(1) Except as provided in subdivision (1a) of this section, a business in one of the categories above means one:
  a. In which at least fifty-one percent (51%) of the business, or of the stock in the case of a corporation, is owned by one or more persons in the category; and
  b. Of which the management and daily business operations are controlled by one or more persons in the category who own it.

(1a) A "disabled business enterprise" means a nonprofit entity whose main purpose is to provide ongoing habilitation, rehabilitation, independent living, and competitive employment for persons who are handicapped through supported employment sites or business operated to provide training and employment and competitive wages.

(1b) A "nonprofit work center for the blind and the severely disabled" means an agency:
  a. Organized under the laws of the United States or this State, operated in the interest of the blind and the severely disabled, the net income of which agency does not inure in whole or in part to the benefit of any shareholder or other individual;
  b. In compliance with any applicable health and safety standard prescribed by the United States Secretary of Labor; and
  c. In the production of all commodities or provision of services, employs during the current fiscal year severely handicapped individuals for (i) a minimum of seventy-five percent (75%) of the hours of direct labor required for the production of commodities or provision of services, or (ii) in accordance with the percentage of direct labor required under the terms and conditions of Public Law 92-28 (41 U.S.C. § 46, et seq.) for the production of commodities or provision of services, whichever is less.

(2) A female or a disabled person is not a minority, unless the female or disabled person is also a member of one of the minority groups described in G.S. 143-128(2)a through d.

(3) A disabled person means a person with a handicapping condition as defined in G.S. 168-1 or G.S. 168A-3.

The Department of Administration shall collect and compile the data described in this section and report it annually to the General Assembly.

In seeking contracts with the State, a disabled business enterprise must provide assurances to the Secretary of Administration that the payments that would be received from the State under these contracts are directed to the training and employment of and payment of competitive wages to handicapped employees. (1931, c. 261, s. 1; c. 396; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1983, c. 692, s. 2; 1989 (Reg. Sess., 1990), c. 1051, s. 1; 1993, c. 252, s. 1; 1995, c. 265, s. 2.)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 24.2 provides: "The Director of the Administrative Office of the Courts may establish local community penalties programs and appoint staff the Director considers necessary. These personnel may serve as full-time or part-time State employees or, alternatively, their activities may be provided on a contractual basis when determined appropriate by the Director. The contracts shall be exempt from competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall adopt rules necessary and appropriate for the administration of the program, including rules that allow plans to be presented at the request of the sentencing judge. Funds appropriated by the General Assembly for the establishment and maintenance of community penalties programs under this Article shall be administered by the Administrative Office of the Courts. Any contract entered into under the authority of this section shall expire not later than June 30, 1995."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1995, c. 265, s. 5, provides that the amendments made by that act expire January 1, 2000.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to contracts for which bids or offers are solicited on or after that date, added the subcatchlines to subsections (a) and (b); in subsection (b) added "and what percentage from nonprofit work centers for the blind and the severely disabled" to the end of the first sentence and made a related change; added subdivision (b)(1b); and in subdivision (b)(3) substituted "person with a handicapping condition as defined in G.S. 168-1 or" for "'handicapped person' as defined in".

§ 143-48.2. (See editor's note) Procurement program for nonprofit work centers for the blind and the severely disabled.

(a) An agency subject to the provisions of this Article for the procurement of goods may purchase goods directly from a nonprofit work center for the blind and severely disabled, subject to the following provisions:

(1) The purchase may not exceed the applicable expenditure benchmark under G.S. 143-53.1.

(2) The goods must not be available under a State requirements contract.

(3) The goods must be of suitable price and quality, as determined by the agency.

(b) An agency subject to the provisions of this Article for the procurement of services may purchase services directly from a nonprofit work center for the blind and severely disabled, subject to the following provisions:

(1) The services must not be available under a State requirements contract.

(2) The services must be of suitable price and quality, as determined by the agency.

(c) The provisions of G.S. 143-52 shall not apply to purchases made pursuant to this section. However, nothing in this section shall prohibit a nonprofit work center for the blind and severely disabled from submitting bids or making offers for contracts under G.S. 143-52.

(d) For the purpose of this subsection, a "nonprofit work center for the blind and severely disabled" has the same meaning as under G.S. 143-48. (1995, c. 265, s. 3.)

Editor's Note. — Session Laws 1995, c. 265, s. 5, made this section effective January 1, 1996.

Session Laws 1995, c. 265, s. 5, provides that the amendments made by that act expire January 1, 2000.

§ 143-49. Powers and duties of Secretary.

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

(1) To canvass sources of supply, including sources of supply of materials and supplies with recycled content, and to purchase or to contract for the purchase, lease and lease-purchase of all supplies, materials, equipment and other tangible personal property required by the State government, or any of its departments, institutions or agencies under competitive bidding or otherwise as hereinafter provided.

(2) To establish and enforce specifications which shall apply to all supplies, materials and equipment to be purchased or leased for the use of the State government or any of its departments, institutions or agencies.

(3) To purchase or to contract for, by sealed, competitive bidding or other suitable means, all contractual services and needs of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.

When the award of any contract for contractual services exceeding a cost of one hundred thousand dollars ($100,000) requires negotiation with prospective contractors, the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in negotiation for the award of the contract. It shall be the duty of such representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. All contracts and drafts of such contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by such office for a period of three years following the termination of such contracts. The term "contractual services" as used in this subsection shall mean work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. The term "negotiation" as used herein shall not be deemed to refer to contracts entered into or to be entered into as a result of a competitive bidding process.

(4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies and to have supervision of inventories of all tangible personal property belonging to the State government, or any of its departments, institu-

tions or agencies. The duties imposed by this subdivision shall not relieve any department, institution or agency of the State government from accountability for equipment, materials, supplies and tangible personal property under its control.

(5) To make provision for or to contract for all State printing, including all printing, binding, paper stock, recycled paper stock, supplies, and supplies with recycled content, or materials in connection with the same.

(6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Human Resources, to private nonprofit agencies licensed or approved by the Department of Human Resources as child placing agencies or residential child-care facilities, and to counties, cities, towns, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract. Prior to adopting rules and regulations under this subdivision, the Secretary of Administration may consult with the Advisory Budget Commission.

(7) **(See editor's note)** To evaluate the nonprofit qualifications and capabilities of qualified work centers to manufacture commodities or perform services. (1931, c. 261, s. 2; 1951, c. 3, s. 1; c. 1127, s. 1; 1957, c. 269, s. 3; 1961, c. 310; 1971, c. 587, s. 1; 1975, c. 580; c. 879, s. 46; 1977, c. 733; 1979, c. 759, s. 1; 1983, c. 717, ss. 60, 62; 1985 (Reg. Sess., 1986), c. 955, ss. 79-82; 1989, c. 408; 1991, c. 358, s. 1; 1993, c. 256, s. 1; 1995, c. 265, s. 1.)

Editor's Note. — Session Laws 1995, c. 265, s. 5, provides that the amendments by that act expire January 1, 2000.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to contracts for which bids or offers are solicited on or after that date, added subdivision (7).

CASE NOTES

The public contracting requirements did not apply to preferred provider contracts which were not for the needs of the State, but were for the benefit of the individual Plan members. Carolina Medicorp, Inc. v. Board of Trustees, 118 N.C. App. 485, 456 S.E.2d 116 (1995).

§ 143-51. Reports to Secretary required of all agencies as to needs.

CASE NOTES

The public contracting requirements did not apply to preferred provider contracts which were not for the needs of the State, but were for the benefit of the individual Plan members. Carolina Medicorp, Inc. v. Board of Trustees, 118 N.C. App. 485, 456 S.E.2d 116 (1995).

§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 18.14, provides that the Department of Transportation is exempted from the provisions of G.S. 136-28.1, 143-52, 143-53, 143-58, 143-128, and 143-129, to the extent necessary to comply with federal rules, regulations, and policies for the completion of a Congestion Avoidance and Reduction for Autos and Trucks system of traffic management for the greater Charlotte-Mecklenburg urban areas, under sections 6051-6059 of the 1991 Intermodal Surface Transportation Efficiency Act, Pub. L. No. 102-240, 23 U.S.C. § 307.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

§ 143-53. Rules.

(a) The Secretary of Administration may adopt rules governing the following: ·

(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.

(2) Prescribing routine for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. 143-53.1.

(3) Defining contractual services for the purposes of G.S. 143-49(3).

(4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.

(5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding.

(6) Prescribing conditions under which partial, progressive and multiple awards may be made.

(7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.

(8) Providing conditions under which bids may be rejected in whole or in part.

(9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.

(10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.

(11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(12) Repealed by Session Laws 1987, c. 827, s. 216.

(b) In adopting the rules authorized by subsection (a) of this section, the Secretary shall include special provisions for the purchase of goods and services, which provisions are necessary to meet the documented training, work, or independent living needs of persons with disabilities according to the requirements of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act, as amended. The Secretary may consult with other agencies having expertise in meeting the needs of individuals with disabilities in developing these provisions. These special provisions shall establish purchasing procedures that:

(1) Provide for the involvement of the individual in the choice of particular goods, service providers, and in the methods used to provide the goods and services;

(2) Provide the flexibility necessary to meet those varying needs of individuals that are related to their disabilities;

(3) Allow for purchase outside of certified sources of supply and competitive bidding when a single source can provide multiple pieces of equipment, including adaptive equipment, that are more compatible with each other than they would be if they were purchased from multiple vendors;

(4) Permit priority consideration for vendors who have the expertise to provide appropriate and necessary training for the users of the equipment and who will guarantee prompt service, ongoing support, and maintenance of this equipment;

(5) Permit agencies to give priority consideration to suppliers offering the earliest possible delivery date of goods or services especially when a time factor is crucial to the individual's ability to secure a job, meet the probationary training periods of employment, continue to meet job requirements, or avoid residential placement in an institutional setting; and

(6) Allow consideration of the convenience of the provider's location for the individual with the disability.

In developing these purchasing provisions, the Secretary shall also consider the following criteria: (i) cost-effectiveness, (ii) quality, (iii) the provider's general reputation and performance capabilities, (iv) substantial conformity with specifications and other conditions set forth for these purchases, (v) the suitability of the goods or services for the intended use, (vi) the personal or other related services needed, (vii) transportation charges, and (viii) any other factors the Secretary considers pertinent to the purchases in question.

(c) The purpose of rules promulgated hereunder shall be to promote sound purchasing management.

Prior to adopting rules under this section, the Secretary of Administration may consult with the Advisory Budget Commission. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, s. 4; 1983, c. 717, ss. 63-64.1; 1985, c. 145, s. 3; 1985 (Reg. Sess., 1986), c. 955, ss. 87, 88; 1987, c. 827, s. 216; 1989 (Reg. Sess., 1990), c. 936, s. 3(b); 1995, c. 256, s. 1.)

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 18.14, provides that the Department of Transportation is exempted from the provisions of G.S. 136-28.1, 143-52, 143-53, 143-58, 143-128, and 143-129, to the extent necessary to comply with federal rules, regulations, and policies for the completion of a Congestion Avoidance and Reduction for Autos and Trucks system of traffic management for the greater Charlotte-Mecklenburg urban areas, under sections 6051-6059 of the 1991 Intermodal Surface Transportation Efficiency Act, Pub. L. No. 102-240, 23 U.S.C. § 307.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, and applicable to rules for purchases made on or after that date, added the subsection (a) and (c) designations and added subsection (b).

§ 143-53.1. Setting of benchmarks; increase by Secretary.

On and after July 1, 1990, the expenditure benchmark prescribed by G.S. 143-52 with respect to competitive bid procedures and the bid value benchmark authorized by G.S. 143-53(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be ten thousand dollars ($10,000); provided, the Secretary of Administration may, in his discretion, increase the benchmarks effective as of the beginning of any fiscal biennium of the State commencing after June 30, 1992, in an amount whose increase, expressed as a percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase. For a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section shall be thirty-five thousand dollars ($35,000). (1989 (Reg. Sess., 1990), c. 936, s. 3(c); 1991, c. 689, s. 206.2(b); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); c. 769, s. 17.6(b).)

Editor's Note. —

Section 206.2 of Session Laws 1991, c. 689, which amended this section, originally provided in s. 206.2(f) that the amendment by s. 206.2(b) to this section would expire June 30, 1994. However, Session Laws 1993 (Reg. Sess., 1994), c. 591, s. 10, deleted this expiration provision.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 17.6(b), effective July 1, 1994, substituted "thirty-five thousand dollars ($35,000)" for "twenty-five thousand dollars ($25,000) on and after July 1, 1991" in the last sentence.

§ 143-54. Certification that bids were submitted without collusion.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-57.1. Furniture requirements contracts.

(a) To ensure agencies access to sufficient sources of furniture supply and service, to provide agencies the necessary flexibility to obtain furniture that is compatible with interior architectural design and needs, to provide small and disadvantaged businesses additional opportunities to participate on State requirements contracts, and to restore the traditional use of multiple award contracts for purchasing furniture requirements, each State furniture requirements contract shall be awarded on a multiple award basis, subject to the following conditions:

(1) Competitive, sealed bids must be solicited for the contract in accordance with Article 3 of Chapter 143 of the General Statutes unless otherwise provided for by the State Purchasing Officer pursuant to that Article.

(2) Subject to the provisions of this section, bids shall be evaluated and the contract awarded in accordance with Article 3 of Chapter 143 of the General Statutes.

(3) For each category of goods under each State requirements furniture contract, awards shall be made to at least three qualified vendors unless the State Purchasing Officer determines that three qualified vendors are not available or that it is in the best interest of the State to make fewer awards. The State Purchasing Officer, subject to the approval of the Board of Award, shall state his reasons in writing for making fewer awards and the written documentation shall be maintained as part of the bid file and subject to public inspection.

(4) Each agency purchasing under the contract shall make the most economical purchase that meets its needs.

(b) For purposes of this section, "furniture requirements contract" means State requirements contracts for casegoods, classroom furniture, bookcases, ergonomic chairs, office swivel and side chairs, computer furniture, mobile and folding furniture, upholstered seating, commercial dining tables, and related items. (1995, c. 136, ss. 1, 3.)

Editor's Note. — Session Laws 1995, c. 136, ss. 1, 3 were codified as this section at the direction of the Revisor of Statutes.

Session Laws 1995, c. 136, s. 2, provides: "Each agency shall report to the Department of Administration, in the manner prescribed by the State Purchasing Officer, its purchases from each multiple award furniture requirements contract. The Department shall compile the information for review by the Secretary. The Secretary shall submit a report to the General Assembly, no later than July 1, 1997, on the use of multiple award contracts for furniture."

Session Laws 1995, c. 136, s. 4, provides that this section is effective upon ratification and applies to contracts for which bids or offers are solicited on or after that date. The act was ratified May 31, 1995.

§ 143-58. Contracts contrary to provisions of Article made void.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 18.14, provides that the Department of Transportation is exempted from the provisions of G.S. 136-28.1, 143-52, 143-53, 143-58, 143-128, and 143-129, to the extent necessary to comply with federal rules, regulations, and policies for the completion of a Congestion Avoidance and Reduction for Autos and Trucks system of traffic management for the greater Charlotte-Mecklenburg urban areas, under sections 6051-6059 of the 1991 Intermodal Surface Transportation Efficiency Act, Pub. L. No. 102-240, 23 U.S.C. § 307.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

CASE NOTES

Cited in Carolina Medicorp, Inc. v. Board of Trustees, 118 N.C. App. 485, 456 S.E.2d 116 (1995).

§ 143-58.1. Unauthorized use of public purchase or contract procedures for private benefit.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-63. Financial interest of officers in sources of supply; acceptance of bribes.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 3B.

Energy Conservation in Public Facilities.

Part 1. Energy Policy and Life-Cycle Cost Analysis.

§ 143-64.10. Findings; policy.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 775, s. 1, effective July 16, 1994, amended the head of Article 3B, which previously read: "Energy Policy for State Government." Section 1.1 of c. 775 designated §§ 143-64.10 to 143-64.16 as Part 1 of Article 3B, and created the Part head.

§ 143-64.16. Application of Part.

The provisions of this Part shall not apply to municipalities or counties, nor to any agency or department of any municipality or county; provided, however, this Part shall apply to any board of a community college. Community college is defined in G.S. 115D-2(2). (1975, c. 434, s. 5; 1989, c. 23, s. 2; 1993, c. 334, s. 7; 1993 (Reg. Sess., 1994), c. 775, s. 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, substituted "Part" for "Article" throughout the section.

Part 2. Guaranteed Energy Savings Contracts for Local Governmental Units.

§ 143-64.17. Definitions.

As used in this Part:

(1) "Energy conservation measure" means a facility alteration or training related to the operation of the facility that reduces energy consumption or operating costs and includes:
   a. Insulation of the building structure and systems within the building;
   b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption;
   c. Automatic energy control systems;
   d. Heating, ventilating, or air-conditioning system modifications or replacements;
   e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are made;

f. Energy recovery systems;

g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings; or

h. Other energy conservation measures that provide long-term operating cost reductions or significantly reduce energy consumed.

(2) "Energy savings" means a measured reduction in fuel, energy, or operating costs created from the implementation of one or more energy conservation measures when compared with an established baseline of previous fuel, energy, or operating costs developed by the local governmental unit.

(3) "Guaranteed energy savings contract" means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs.

(4) "Local governmental unit" means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.

(5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures.

(6) "Request for proposals" means a negotiated procurement initiated by a local governmental unit by way of a published notice that includes the following:

a. The name and address of the local governmental unit.

b. The name, address, title, and telephone number of a contact person in the local governmental unit.

c. Notice indicating that the local governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.

d. The date, time, and place where proposals must be received.

e. The evaluation criteria for assessing the proposals.

f. A statement reserving the right of the local governmental unit to reject any or all the proposals.

g. Any other stipulations and clarifications the local governmental unit may require. (1993 (Reg. Sess., 1994), c. 775, s. 3; 1995, c. 295, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 775, s. 11, made this Part effective upon ratification. The Act was ratified July 16, 1994.

Effect of Amendments. — The 1995 amendment, effective June 20, 1995, and applicable to contracts entered into on or after that date, deleted the second sentence of subdivision (3), regarding when the local governmental unit could not be required to purchase a maintenance contract from the qualified provider installing the energy conservation measures.

§ 143-64.17A. Solicitation of guaranteed energy savings contracts.

(a) Before entering into a guaranteed energy savings contract, a local governmental unit shall issue a request for proposals. Notice of the request shall be published at least 15 days in advance of the time specified for opening of the proposals in at least one newspaper of general circulation in the geographic area for which the local governmental unit is responsible. No guaranteed energy savings contract shall be awarded by any governing body unless at least two proposals have been received from qualified providers. Provided that if after the publication of the notice of the request for proposals, fewer than two proposals have been received from qualified providers, the governing body of the local governmental unit shall again publish notice of the request and if as a result of the second notice, one or more proposals by qualified providers are received, the governing body may then open the proposals and select a qualified provider even if only one proposal is received.

(b) The local governmental unit shall evaluate a sealed proposal from any qualified provider. Proposals shall contain estimates of all costs of installation, modification, or remodeling, including costs of design, engineering, installation, maintenance, repairs, and debt service, and estimates of energy savings.

(c) Proposals received pursuant to this section shall be opened by a member or an employee of the governing body of the local governmental unit at a public opening at which the contents of the proposals shall be announced and recorded in the minutes of the governing body. Proposals shall be evaluated for the local governmental unit by a licensed architect or engineer on the basis of:

(1) The information required in subsection (b) of this section; and

(2) The criteria stated in the request for proposals.

The local governmental unit may require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the local governmental unit for evaluation of the proposal by a licensed architect or professional engineer not employed as a member of the staff of the local governmental unit or the qualified provider.

(d) The local governmental unit shall select the qualified provider that it determines to best meet the needs of the local governmental unit by evaluating the following:

(1) Prices offered;

(2) Proposed costs of construction, financing, maintenance, and training;

(3) Quality of the products proposed;

(4) Amount of energy savings;

(5) General reputation and performance capabilities of the qualified providers;

(6) Substantial conformity with the specifications and other conditions set forth in the request for proposals;

(7) Time specified in the proposals for the performance of the contract; and

(8) Any other factors the local governmental unit deems necessary, which factors shall be made a matter of record.

(e) Nothing in this section shall limit the authority of local governmental units as set forth in Article 3D of this Chapter. (1993 (Reg. Sess., 1994), c. 775, s. 3.)

§ 143-64.17B. Guaranteed energy savings contracts.

(a) A local governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

(1) The term of the contract does not exceed eight years from the date of the installation and acceptance by the local governmental unit of the energy conservation measures provided for under the contract.

(2) The local governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.

(3) The energy conservation measures to be installed under the contract are for an existing building.

(b) Before entering into a guaranteed energy savings contract, the local governmental unit shall provide published notice of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose. The notice must be published at least 15 days before the date of the meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide a bond to the local governmental unit in the amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the local governmental unit have not been made, the local governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

(d) As used in this section, "total cost" shall include, but not be limited to, costs of construction, costs of financing, and costs of maintenance and training during the term of the contract. "Total cost" does not include any obligations on termination of the contract before its expiration, provided that those obligations are disclosed when the contract is executed.

(e) A guaranteed energy savings contract may not require the local governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the local unit of government takes appropriate action to budget for its own forces or another provider to maintain new systems installed and existing systems affected by the guaranteed energy savings contract. (1993 (Reg. Sess., 1994), c. 775, s. 3; 1995, c. 295, s. 2.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 775, s. 9 provides that a local governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the Local Government Commission, and that the Commission shall compile the information, including the energy savings expected and realized, and report it biennially to the Joint Legislative Commission on Governmental Operations.

Session Laws 1993 (Reg. Sess., 1994), c. 775, which enacted this Part, in s. 10, as amended by Session Laws 1995, c. 295, s. 3, provides: "A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999."

Session Laws 1993 (Reg. Sess., 1994), c. 775, which enacted this Part, in s. 10, as amended by Session Laws 1995, c. 295, s. 3, provides: "A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999."

Effect of Amendments. — The 1995 amendment, effective June 20, 1995, and applicable to contracts entered into on or after that date, added "and all required shortfall payments to the local governmental unit have not been made" in the last sentence of subsection (c); in the last sentence of subsection (d) substituted "does not include" for "also includes", and added "provided that those obligations are disclosed when the contract is executed"; and added subsection (e).

§ 143-64.17C. Installment and lease-purchase contracts.

Units of local government may finance the acquisition, installation, or maintenance of energy conservation measures acquired pursuant to this Part by installment or lease-purchase contracts in accordance with G.S. 160A-20 and G.S. 160A-19. Notwithstanding the provisions of G.S. 160A-20(h), a community college or board of education may enter into an installment contract or a lease-purchase contract for the purpose of financing energy conservation measures acquired pursuant to this Part. A community college or board of education that finances energy conservation measures pursuant to this section, either by an installment contract or a lease-purchase contract, is subject to the conditions and restrictions set out in G.S. 160A-20(a) through (g). (1993 (Reg. Sess., 1994), c. 775, s. 3.)

§ 143-64.17D. Contract continuance.

A guaranteed energy savings contract may extend beyond the fiscal year in which it becomes effective. Such a contract shall stipulate that it does not constitute a debt, liability, or obligation of any local governmental unit or a pledge of the faith and credit of any unit of local government. (1993 (Reg. Sess., 1994), c. 775, s. 3.)

§ 143-64.17E. Payments under contract.

A local governmental unit may use any funds, whether operating or capital, that are not otherwise restricted by law for the payment of a guaranteed energy savings contract. State appropriations to any local governmental unit shall not be reduced as a result of energy savings occurring as a result of a guaranteed energy savings contract. (1993 (Reg. Sess., 1994), c. 775, s. 3.)

§§ 143-64.17F through 143-64.19: Reserved for future codification purposes.

ARTICLE 3C.

Contracts to Obtain Consultant Services.

§ 143-64.20. "Agency" defined; Governor's approval required.

Cross References. — As to the establishment of community penalty programs, see note under § 143-48.

ARTICLE 3D.

Procurement of Architectural, Engineering, and Surveying Services.

§ 143-64.31. Declaration of public policy.

Local Modification. — Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004).

§ 143-64.32. Written exemption of particular contracts.

Local Modification. — Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004).

ARTICLE 6.

Officers of State Institutions.

§ 143-115. Trustee, director, officer or employee violating law guilty of misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 6A.

Rules of Conduct; Traffic Laws for Institutions.

§ 143-116.6. Rules concerning conduct; violation.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

The phrase "copies of the ordinances" in the last sentence of subsection (a) of this section, as set out in the main pamphlet, should read "copies of the rules."

ARTICLE 8.

Public Contracts.

§ 143-128. (Effective until July 1, 1996) Requirements for certain building contracts.

(a) Preparation of specifications. — Every officer, board, department, commission or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration or repair of any buildings for the State, or for any county, municipality, or other public body, must have prepared separate specifications for each of the following subdivisions or branches of work to be performed:

(1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system) and/or refrigeration for cold storage (where the cold storage cooling load is 15 tons or more of refrigeration), and all work kindred thereto.

(2) Plumbing and gas fittings and accessories, and all work kindred thereto.

(3) Electrical wiring and installations, and all work kindred thereto.

(4) General work relating to the erection, construction, alteration, or repair of any building above referred to, which work is not included in the above-listed three subdivisions or branches.

All such specifications must be so drawn as to permit separate and independent bidding upon each of the subdivisions or branches of work enumerated above. The above enumeration of subdivisions or branches of work shall not be construed to prevent any officer, board, department, commission or commissions from preparing additional separate specifications for any other category of work.

(b) Building projects over five hundred thousand dollars ($500,000); separate prime contracts. — Except as provided in subsection (d) of this section, when the entire cost of the erection, construction, alteration, or repair of a building exceeds five hundred thousand dollars ($500,000), the State, county, municipality, or other public body shall accept bids for each subdivision or branch of work for which specifications are required to be prepared under subsection (a) of this section and shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch for which separate bids are required by this subsection is less than twenty-five thousand dollars ($25,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost.

Bids may also be accepted from and awards made to separate contractors for other categories of work.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county or municipality, and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, "separate contractor" means any person, firm or corporation who shall enter into a contract with the State, or with any county, municipality, or other public body, for the erection, construction, alteration or repair of any building or buildings, or parts thereof.

(c) Building projects five hundred thousand dollars ($500,000) or less. — When the entire cost of the erection, construction, alteration, or repair of a building is five hundred thousand dollars ($500,000) or less, the State, county, municipality, or other public body may accept bids under the single-prime contract system, the separate prime contract system, or both. The provisions of subsection (b) of this section apply to the use of the separate prime contract system under this subsection. The provisions of subsection (d) of this section apply to the use of the single-prime contract system under this section, except that bidding in the alternative between the single-prime and separate prime systems is not required. Contracts bid in the alternative between the single-prime and separate prime systems under this subsection must be awarded to the lowest responsible bidder or bidders, as provided in subsection (d) of this section.

(d) Single-prime contracts. — The State, a county, municipality, or other public body may accept bids under the single-prime contract system.

If the State, county, municipality, or other public body accepts bids under the single-prime contract system, it must also seek bids for the project under the separate prime contract system and award the contract to the lowest responsible bidder or bidders for the total project, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.

When bids are accepted under the single-prime contract system all bidders must identify on their bid the contractors they have selected for the subdivisions or branches of work for:

(1) Heating, ventilating, and air conditioning;
(2) Plumbing;
(3) Electrical; and
(4) General.

No contractor whose bid is accepted shall substitute any person as subcontractor in the place of the subcontractor listed in the original

§ 143-128 is set out twice. See notes.

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bid, except with the approval of the awarding authority for good cause shown by the contractor. The terms, conditions, and requirements of each contract between the contractor and a subcontractor performing work under a subdivision or branch of work listed in this subsection shall be substantially the same as the terms, conditions, and requirements of the contract between the contractor and the State, county, municipality, or other public body.

(e) Project expediter; scheduling. — The State, county, municipality, or other public body may, if specified in the bid documents, provide for assignment of responsibility for expediting the work on the project to a single responsible and reliable person, firm, or corporation which may be a prime contractor. In executing this responsibility, the designated project expediter may recommend to the State, county, municipality, or other public body whether payment to a contractor should be approved. The project expediter, if required by the contract documents, shall be responsible for the preparation of the project schedule and shall allow all contractors and subcontractors performing any of the branches of work listed in subsection (d) of this section equal input into the preparation of the initial schedule.

(f) Minority goals. — The State shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of work for each building project. Each city, county, or other public body shall adopt, after a notice and public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for each building project.

As used in this subsection:

(1) The term "minority-business" means a business:
  a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons; and
  b. Of which the management and daily business operations are controlled by one or more of the minority persons who own it.

(2) The term "minority person" means a person who is a citizen or lawful permanent resident of the United States and who is:
  a. Black, that is, a person having origins in any of the black racial groups in Africa;
  b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
  c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
  d. American Indian or Alaskan Native, that is, a person having origins in any of the original peoples of North America; or
  e. Female.

(3) The term "verifiable goal" means for purposes of the separate prime contract system, that the awarding authority has adopted written guidelines specifying the actions that will be taken to ensure a good faith effort in the recruitment

§ 143-128 is set out twice. See notes.

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and selection of minority businesses for participation in contracts awarded under this section; and

(4) The term "verifiable goal" means for purposes of the single-prime contract system, that the awarding authority has adopted written guidelines specifying the actions that the prime contractor must take to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section; the required actions must be documented in writing by the contractor to the appropriate awarding authority.

The State, counties, municipalities, and all other public bodies shall award public building contracts without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible bid or bids.

(g) Exceptions. — This section shall not apply to:

(1) The purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work which must be performed at the construction site.

(2) The erection, construction, alteration, or repair of a building when the cost thereof is one hundred thousand dollars ($100,000) or less. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46; 1943, c. 387; 1945, c. 851; 1949, c. 1137, s. 1; 1963, c. 406, ss. 2-7; 1967, c. 860; 1973, c. 1419; 1977, c. 620; 1987 (Reg. Sess., 1988), c. 1108, ss. 4, 5; 1989, c. 480, s. 1; 1995, c. 358, s. 4; c. 367, ss. 1, 4; c. 509, s. 79.)

Section Set Out Twice. — This version of 143-128 is effective until July 1, 1996. For the version effective July 1, 1996 see the following section.

Local Modification. — Alamance: 1993, c. 153, s. 3, as amended by 1995, c. 198, (effective June 14, 1993 to June 30, 1998); Columbus: 1993 (Reg. Sess., 1994), c. 757, s. 2 (expires December 31, 1995); Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004); Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; (As to Art. 8) Mecklenburg: 1993 (Reg. Sess., 1994), c. 573, s. 1; Surry: 1993 (Reg. Sess., 1994), c. 705, s. 1; city of Greensboro: 1995, c. 54, s. 1; town of Clayton: 1995, c. 125, s. 1; town of Southern Shores: 1995, c. 70, s. 1 (expires October 1, 1998).

For additional local modifications to this section, see the main pamphlet.

Editor's Note. — Session Laws 1989, c. 480, which amended this section effective June 28, 1989, provided in s. 4, as amended by Session Laws 1995, c. 358, s. 4, that the act would expire July 14, 1995. The expiration date was deleted by Session Laws 1995, c. 367, s. 1, effective June 30, 1995.

As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1995, c. 367, s. 2 repealed s. 3 of c. 480 of the 1989 Session Laws, regarding monitoring and studying of the separate prime and single-prime contract systems in the bidding of public building projects, records of public contracts, and a compilation of data.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the

Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 18.14, provides that the Department of Transportation is exempted from the provisions of G.S. 136-28.1, 143-52, 143-53, 143-58, 143-128, and 143-129, to the extent necessary to comply with federal rules, regulations, and policies for the completion of a Congestion Avoidance and Reduction for Autos and Trucks system of traffic management for the greater Charlotte-Mecklenburg urban areas, under sections 6051-6059 of the 1991 Intermodal Surface Transportation Efficiency Act, Pub. L. No. 102-240, 23 U.S.C. § 307.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Effect of Amendments. — Session Laws 1995, c. 367, s. 1, effective June 30, 1995, deleted the expiration date of subsections (b), (c) and (d), which were to expire on June 30, 1995.

Session Laws 1995, c. 367, s. 4, effective October 1, 1995, and applicable to contracts for are bids which solicited on or after that date, rewrote this section.

Session Laws 1995, c. 509, s. 79, effective July 29, 1995, substituted "Portuguese" for "Portugese" in present subdivision (f)(2)b.

CASE NOTES

Stated in APAC-Carolina, Inc. v. Greensboro-High Point Airport Auth., 110 N.C. App. 664, 431 S.E.2d 508 (1993).

OPINIONS OF ATTORNEY GENERAL

Constitutionality. — The minority participant provisions in this section, §§ 136-28.4, 160A-17.1, and Session Laws 1989, c. 8, s. 3(b) (Senate Bill 38) appear to be facially constitutional under the principles established by the United States Supreme Court in City of Richmond v. J.A. Croson Company, — U.S. —, 109 S. Ct. 706 (1989), because none of the provisions in question mandate a racial preference which would result in a deprivation of personal rights guaranteed to all persons by the Equal Protection Clause of the Fourteenth Amendment. See opinion of the Attorney General to Rep. Thomas C. Hardaway, Co-Chairman, Sen. Ralph Hunt, Co-Chairman, Legislative Research Commission Committee on Minority Business Contracts and Small Business Assistance, 60 N.C.A.G. 1 (1990).

Separate Prime Rate Contractor System. — Contracts awarded by the State, city, county, or other public body pursuant to the separate prime rate contractor system are not exempt from the "verifiable percentage goal for participation by minority businesses" requirement as set forth in subsection (c) of this section. See opinion of the Attorney General to James K. Polk, Special Asst. to Gov. for Minority Affairs, 60 N.C.A.G. 79 (1991).

The single prime contractor is required to make the good faith effort to recruit and select minority businesses for participation in contracts awarded under subdivision (c)(4) of this section, but the awarding authority is required to adopt written guidelines which should specify actions which must be taken by the separate prime contractors to seek minority participation. See opinion of the Attorney General to James K. Polk, Special Asst. to Gov. for Minority Affairs, 60 N.C.A.G. 79 (1991).

§ 143-128. (Effective July 1, 1996) Requirements for certain building contracts.

(a) Preparation of specifications. — Every officer, board, department, commission or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration or repair of any buildings for the State, or for any county, municipality, or other public body, must have prepared separate specifications for each of the following subdivisions or branches of work to be performed:

(1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system) and/or refrigeration for cold storage (where the cold storage cooling load is 15 tons or more of refrigeration), and all work kindred thereto.

(2) Plumbing and gas fittings and accessories, and all work kindred thereto.

(3) Electrical wiring and installations, and all work kindred thereto.

(4) General work relating to the erection, construction, alteration, or repair of any building above referred to, which work is not included in the above-listed three subdivisions or branches.

All such specifications must be so drawn as to permit separate and independent bidding upon each of the subdivisions or branches of work enumerated above. The above enumeration of subdivisions or branches of work shall not be construed to prevent any officer, board, department, commission or commissions from preparing additional separate specifications for any other category of work.

(b) Building projects over five hundred thousand dollars ($500,000); separate prime contracts. — Except as provided in subsection (d) of this section, when the entire cost of the erection, construction, alteration, or repair of a building exceeds five hundred thousand dollars ($500,000), the State, county, municipality, or other public body shall accept bids for each subdivision or branch of work for which specifications are required to be prepared under subsection (a) of this section and shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch for which separate bids are required by this subsection is less than twenty-five thousand dollars ($25,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost.

Bids may also be accepted from and awards made to separate contractors for other categories of work.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county or municipality, and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, "separate contractor" means any person, firm or corporation who shall enter into a contract with the State, or with any county, municipality, or other public body, for the erection, construction, alteration or repair of any building or buildings, or parts thereof.

§ 143-128 is set out twice. See notes.

(c) Building projects five hundred thousand dollars ($500,000) or less. — When the entire cost of the erection, construction, alteration, or repair of a building is five hundred thousand dollars ($500,000) or less, the State, county, municipality, or other public body may accept bids under the single-prime contract system, the separate prime contract system, or both. The provisions of subsection (b) of this section apply to the use of the separate prime contract system under this subsection. The provisions of subsection (d) of this section apply to the use of the single-prime contract system under this section, except that bidding in the alternative between the single-prime and separate prime systems is not required. Contracts bid in the alternative between the single-prime and separate prime systems under this subsection must be awarded to the lowest responsible bidder or bidders, as provided in subsection (d) of this section.

(d) Single-prime and alternative contracts. — The State, a county, municipality, or other public body may accept bids under the single-prime contract system or a contracting method approved by the State Building Commission under G.S. 143-135.26.

If the State, county, municipality, or other public body accepts bids under the single-prime contract system, it must also seek bids for the project under the separate prime contract system, except as otherwise authorized under G.S. 143-135.26, and award the contract to the lowest responsible bidder or bidders for the total project, taking into consideration quality, performance and the time specified in the bids for the performance of the contract.

When bids are accepted under the single-prime contract system all bidders must identify on their bid the contractors they have selected for the subdivisions or branches of work for:

(1) Heating, ventilating, and air conditioning;
(2) Plumbing;
(3) Electrical; and
(4) General.

No contractor whose bid is accepted shall substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except with the approval of the awarding authority for good cause shown by the contractor. The terms, conditions, and requirements of each contract between the contractor and a subcontractor performing work under a subdivision or branch of work listed in this subsection shall be substantially the same as the terms, conditions, and requirements of the contract between the contractor and the State, county, municipality, or other public body.

The requirements of this subsection governing the identification of bidders, substitution of contractors, and the terms and conditions of subcontractor's contracts apply to all single-prime bidding and single-prime contracts, regardless of whether bidding in the alternative between the single-prime and separate prime systems has been waived by the State Building Commission.

(e) Project expediter; scheduling. — The State, county, municipality, or other public body may, if specified in the bid documents, provide for assignment of responsibility for expediting the work on the project to a single responsible and reliable person, firm or corporation, which may be a prime contractor. In executing this responsibility, the designated project expediter may recommend to the State, county, municipality, or other public body whether pay-

§ 143-128 is set out twice. See notes.

ment to a contractor should be approved. The project expediter, if required by the contract documents, shall be responsible for the preparation of the project schedule and shall allow all contractors and subcontractors performing any of the branches of work listed in subsection (d) of this section equal input into the preparation of the initial schedule.

(f) Minority goals. — The State shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of work for each building project. Each city, county, or other public body shall adopt, after a notice and public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for each building project.

As used in this subsection:

(1) The term "minority-business" means a business:
  a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons; and
  b. Of which the management and daily business operations are controlled by one or more of the minority persons who own it.

(2) The term "minority person" means a person who is a citizen or lawful permanent resident of the United States and who is:
  a. Black, that is, a person having origins in any of the black racial groups in Africa;
  b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
  c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
  d. American Indian or Alaskan Native, that is, a person having origins in any of the original peoples of North America; or
  e. Female.

(3) The term "verifiable goal" means:
  a. For purposes of the separate prime contract system, that the awarding authority has adopted written guidelines specifying the actions that will be taken to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section.
  b. For purposes of the single-prime contract system, that the awarding authority has adopted written guidelines specifying the actions that the prime contractor must take to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section; the required actions must be documented in writing by the contractor to the appropriate awarding authority.
  c. For purposes of an alternative contracting system authorized by the State Building Commission under G.S. 143-135.26(9), that the awarding authority has

§ 143-128 is set out twice. See notes.

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adopted written guidelines specifying the action to be taken to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section.

The State, counties, municipalities, and all other public bodies shall award public building contracts without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible bid or bids.

(g) Exceptions. — This section shall not apply to:

(1) The purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work which must be performed at the construction site.

(2) The erection, construction, alteration, or repair of a building when the cost thereof is one hundred thousand dollars ($100,000) or less. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46; 1943, c. 387; 1945, c. 851; 1949, c. 1137, s. 1; 1963, c. 406, ss. 2-7; 1967, c. 860; 1973, c. 1419; 1977, c. 620; 1987 (Reg. Sess., 1988), c. 1108, ss. 4, 5; 1989, c. 480, s. 1; 1995, c. 358, s. 4; c. 367, ss. 1, 4, 5; c. 509, s. 79.)

Section Set Out Twice. — This version of 143-128 is effective July 1, 1996. For the version effective until July 1, 1996 see the preceding section.

Effect of Amendments. — Session Laws 1995, c. 367, s. 5, effective July 1, 1996, and applicable to contracts for which bids are solicited on or after that date, in subsection (d) inserted "and alternative" in the subcatchline, added "or a contracting method approved by the State Building Commission under G.S. 143-135.26" to the end of the first sentence, inserted "except as otherwise authorized under G.S. 143-135.26" following "prime contract" in the second paragraph, and added the last paragraph in subsection (d); in subsection (f) added the subdivision (f)(3)a. and (f)(3)b. designations and made related changes, deleted subdivision (f)(4) which read "The term verifiable goal means for" following present subdivision (f)(3)a., and added subdivision (f)(3)c.

§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.

(a) No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than one hundred thousand dollars ($100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than twenty thousand dollars ($20,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131.

(b) Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bids are in excess of the funds available for the project, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein. In the case of proposals in an estimated amount of less than one hundred thousand dollars ($100,000) for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a bid bond or other deposit.

Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening of a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor.

(c) All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, said board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit. In the case of contracts for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a surety bond or other deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

(d) Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

(e) Any board or governing body of the State or any institution of the State government or of any county, city, town, or other subdivision of the State may enter into any contract with (i) the United States of America or any agency thereof, or (ii) any other government unit or agency thereof within the United States, for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without regard to the foregoing provisions of this section or to the provisions of any other section of this Article.

The Secretary of Administration or the governing board of any county, city, town, or other subdivision of the State may designate any officer or employee of the State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment or other property owned by (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, and may authorize such officer or employee to make any partial or down payment or payment in full that may be required by regulations of the government or agency disposing of such property.

(f) The provisions of this Article shall not apply to purchases of apparatus, supplies, materials, or equipment by hospitals when performance or price competition for a product are not available; when a needed product is available from only one source of supply; when standardization or compatibility is the overriding consideration; when a particular medical item or prosthetic appliance is needed; when a particular product is ordered by an attending physician for his patients; when additional products are needed to complete an ongoing job or task; when products are purchased for "over-the-counter" resale; when a particular product is needed or desired for experimental, developmental, or research work; or when equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines that the equipment should be purchased. The governing body of a hospital shall keep a record of all purchases made pursuant to this exception. These records are subject to public inspection. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2; 1979, c. 182, s. 1; 1979, 2nd Sess., c. 1081; 1981, c. 346, s. 1; c. 754, s. 1; 1985, c. 145, ss. 1, 2; 1987, c. 590; 1987 (Reg. Sess., 1988), c. 1108, ss. 7, 8; 1989, c. 350; 1993, c. 539, s. 1007; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 367, s. 6.)

Local Modification. — Alamance: 1993, c. 153, s. 3, as amended by 1995, c. 198 (effective June 14, 1993 to June 30, 1998); Columbus: 1993 (Reg. Sess., 1994), c. 757, s. 2 (expires December 31, 1995); Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004); Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; Mecklenburg: 1993 (Reg. Sess., 1994), c. 709, s. 1; c. 712, 2. 1; Surry: 1993 (Reg. Sess., 1994), c. 705, s. 1; city of Charlotte: 1995, c. 273, s. 1; city of Greensboro: 1993, c. 153, ss. 1, 2, as amended by 1995, c. 198, (effective June 14, 1993 to June 30, 1998); city of Greensboro: 1995, c. 218, s. 1; town of Clayton: 1995, c. 125, s. 1; town of Southern Shores: 1995, c. 70, s. 1 (expires October 1, 1998).

For additional local modifications to this section, see the main pamphlet.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 18.14, provides that the Department of Transportation is exempted from the provisions of G.S. 136-28.1, 143-52, 143-53, 143-58, 143-128, and 143-129, to the extent necessary to comply with federal rules, regulations, and policies for the completion of a Congestion Avoidance and Reduction for Autos and Trucks system of traffic management for the greater Charlotte-Mecklenburg urban areas, under sections 6051-6059 of the 1991 Intermodal Surface Transportation Efficiency Act, Pub. L. No. 102-240, 23 U.S.C. § 307.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Effect of Amendments. —

The 1995 amendment, effective October 1, 1995, and applicable to the award of contracts on or after that date, substituted "one hundred thousand dollars ($100,000)" for "fifty thousand dollars ($50,000)" in the first sentence of subsection (a).

§ 143-129.1. Withdrawal of bid.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-129.4. Guaranteed energy savings contracts.

The solicitation and evaluation of proposals for guaranteed energy savings contracts, as defined in Part 2 of Article 3B of this Chapter, and the letting of contracts for these proposals are governed solely by the provisions of that Part; except that guaranteed energy savings contracts are subject to the requirements of G.S. 143-128(f). (1993 (Reg. Sess., 1994), c. 775, s. 4; 1995, c. 509, s. 135.2(k).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 775, s. 11, made this section effective upon ratification. The Act was ratified July 16, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 775, which enacted this section, in s. 9 provides that a local governmental unit that enters into a guaranteed energy savings contract must report it to the Local Government Commission.

Session Laws 1993 (Reg. Sess., 1994), c. 775, which enacted this section, in s. 10 provides: "A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1997."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "G.S. 143-128(f)" for "G.S. 143-128(c)".

§ 143-129.5. (See Editor's note) Purchases from nonprofit work centers for the blind and severely disabled.

Notwithstanding G.S. 143-129, a city, county, or other governmental entity subject to this Article may purchase goods and services directly from a nonprofit work center for the blind and severely disabled, as defined in G.S. 143-48.

The Department of Administration shall report annually to the Joint Legislative Commission on Governmental Operations on its administration of this program. (1995, c. 265, s. 4.)

Editor's Note. — Session Laws 1995, c. 265, s. 5, made this section effective January 1, 1996.

Session Laws 1995, c. 265, s. 5, provides that this section expires January 1, 2000.

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.

Local Modification. — Alamance: 1993, c. 153, s. 3, as amended by 1995, c. 198 (effective June 14, 1993 to June 30, 1998); Columbus: Session Laws 1993 (Reg. Sess., 1994), c. 757, s. 2 (expires December 31, 1995); Currituck: Session Laws 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004); Franklin: Session Laws 1993 (Reg. Sess., 1994), c. 757, s. 1; Surry: Session Laws 1993 (Reg. Sess., 1994), c. 705, s. 1; city of Greensboro: 1995, c. 218, s. 2; town of Clayton: 1995, c. 125, s. 1; town of Southern Shores: 1995, c. 70, s. 1 (expires October 1, 1998).

For additional local modifications to this section, see the main pamphlet.

Editor's Note. —

As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

§ 143-132. Minimum number of bids for public contracts.

(a) No contract to which G.S. 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor; however, this section shall not apply to contracts which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for bids as required by G.S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State agency or of a county, city, town or other subdivision of the State shall again advertise for bids; and if as a result of such second advertisement, not as many as three competitive bids from reputable and qualified contractors are received, such board or governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received.

(b) For purposes of contracts bid in the alternative between the separate-prime and single-prime contracts, pursuant to G.S. 143-128(c) or (d), each single-prime bid shall constitute a competitive bid in each of the four subdivisions or branches of work listed in G.S. 143-128(a), and each full set of separate-prime bids shall constitute a competitive single-prime bid in meeting the requirements of subsection (a) of this section. If there are at least three single-prime bids but there is not at least one full set of separate-prime bids, no separate-prime bids shall be opened.

(c) The State Building Commission shall develop guidelines no later than January 1, 1991, governing the opening of bids pursuant to this Article. These guidelines shall be distributed to all public bodies subject to this Article. The guidelines shall not be subject to the provisions of Chapter 150B of the General Statutes. (1931, c. 291, s. 3; 1951, c. 1104, s. 3; 1959, c. 392, s. 2; 1963, c. 289; 1967, c. 860; 1977, c. 644; 1979, c. 182, s. 2; 1989, c. 480, s. 2; 1989 (Reg. Sess., 1990), c. 1051, s. 4; 1991 (Reg. Sess., 1992), c. 985, s. 1; 1995, c. 358, s. 4; c. 367, ss. 1, 7.)

Local Modification. — Alamance: 1993, c. 153, s. 3, as amended by 1995, c. 198 (effective June 14, 1993 to June 30, 1998); Columbus: Session Laws 1993 (Reg. Sess., 1994), c. 757, s. 2 (expires December 31, 1995); Currituck: Session Laws 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004); Franklin: Session Laws 1993 (Reg. Sess., 1994), c. 757, s. 1; Surry: Session Laws 1993 (Reg. Sess., 1994), c. 705, s. 1; town of Clayton: 1995, c. 125, s. 1; town of Southern Shores: 1995, c. 70, s. 1 (expires October 1, 1998).

For additional local modifications to this section, see the main pamphlet.

Editor's Note. — Session Laws 1989, c. 480, which amended this section effective June 28, 1989, provided in s. 4, as amended by Session Laws 1995, c. 358, s. 4, that the act would expire July 14, 1995. The expiration date was deleted by Session Laws 1995, c. 367, s. 1, effective June 30, 1995.

As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1995, c. 367, s. 2 repealed s. 3 of c. 480 of the 1989 Session Laws, regarding monitoring and studying of the separate prime and single-prime contract systems in the bidding of public building projects, records of public contracts, and a compilation of data.

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Effect of Amendments. — Session Laws 1995, c. 367, s. 1, effective June 30, 1995, deleted the expiration date of subsection (b), which would have expired on June 30, 1995.

Session Laws 1995, c. 367, s. 7, effective October 1, 1995, substituted "G.S. 143-128(c) or (d)" for "G.S. 143-128(b)" in subsection (b).

§ 143-134. Applicable to Department of Transportation and Department of Correction; exceptions.

Editor's Note. —

As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

§ 143-135. Limitation of application of Article.

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed one hundred twenty-five thousand dollars ($125,000) or the total cost of labor on the project does not exceed fifty thousand dollars ($50,000). This force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article. (1933, c. 552, ss. 1, 2; 1949, c. 1137, s. 2; 1951, c. 1104, s. 6; 1967, c. 860; 1975, c. 292, ss. 1, 2; c. 879, s. 46; 1979, 2nd Sess., c. 1248; 1981, c. 860, s. 13; 1995, c. 274, s. 1.)

Local Modification. — Avery: 1995, c. 175, s. 1; Watauga: 1993 (Reg. Sess., 1994), c. 667, s. 1; town of Beech Mountain: 1993 (Reg. Sess., 1994), c. 586, s. 1 (expires December 31, 1996); town of Boonvillle: 1993 (Reg. Sess., 1994), c. 667, s. 1.

By virtue of Session Laws 1995, c. 169, s. 3, and Session Laws 1995, c. 219, s. 3, the local modifications by Session Laws 1973, c. 563 for the City of Charlotte and the County of Mecklenburg should be stricken from the main volume.

By virtue of Session Laws 1995, c. 274, s. 2, the local modification for the County of Mecklenburg, as added by Session Laws 1995, c. 219, s. 1, is repealed.

For additional local modifications to this section, see the main pamphlet.

Effect of Amendments. — The 1995 amendment, effective June 19, 1995, in subdivision (ii) of the first sentence added "either", and substituted "one hundred twenty-five thousand dollars ($125,000) or the total cost of labor on the project does not exceed fifty thousand dollars ($50,000)" for "seventy-five thousand dollars ($75,000)"; and made stylistic changes.

§ 143-135.3. Adjustment and resolution of State board construction contract claim.

CASE NOTES

Cited in APAC-Carolina, Inc. v. Greensboro-High Point Airport Auth., 110 N.C. App. 664, 431 S.E.2d 508 (1993); State ex rel. State Art Museum Bldg. Comm'n v. Travelers Indem. Co., 111 N.C. App. 330, 432 S.E.2d 419 (1993).

§ 143-135.8. Prequalification.

Bidders may be prequalified for any public construction project. (1995, c. 367, s. 8.)

Editor's Note. — Session Laws 1995, c. 367, s. 11, made this section effective October 1, 1995.

§ 143-135.9: Reserved for future codification purposes.

Article 8B.

State Building Commission.

§ 143-135.25. State Building Commission — Creation; staff; membership; appointments; terms; vacancies; chairman; compensation.

(a) A State Building Commission is created within the Department of Administration to develop procedures to direct and guide the State's capital facilities development and management program and to perform the duties created under this Article.

(b) The State Construction Office of the Department of Administration shall provide staff to the State Building Commission. The chairman of the Commission shall provide direction to the State Construction Office on its work for the Commission.

The director of the State Construction Office shall be a registered engineer or licensed architect and shall be technically qualified by educational background and professional experience in building design, construction, or facilities management. The administrative head shall be appointed by the Secretary of the Department of Administration.

(c) **(Applicable until January 1, 1997)** The Commission shall consist of nine members qualified and appointed as follows:

(1) A licensed architect whose primary practice is or was in the design of buildings, chosen from among not more than three persons nominated by the North Carolina Chapter of the American Institute of Architects, appointed by the Governor.

(2) A registered engineer whose primary practice is or was in the design of engineering systems for buildings, chosen from among not more than three persons nominated by the Consulting Engineers Council and the Professional Engineers of North Carolina, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(3) A licensed building contractor whose primary business is or was in the construction of buildings, or an employee of a company holding a general contractor's license, chosen from among not more than three persons nominated by the Carolinas AGC (Associated General Contractors), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(4) A licensed electrical contractor whose primary business is or was in the installation of electrical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Electrical Contractors, and the Carolinas Electrical Contractors' Association, appointed by the Governor.

(5) A public member appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.

(6) A licensed mechanical contractor whose primary business is or was in the installation of mechanical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Plumbing, Heating, Cooling Contractors, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(7) An employee of the university system currently involved in the capital facilities development process, chosen from among not more than three persons nominated by the Board of Governors of The University of North Carolina, appointed by the Governor.

(8) A public member who is knowledgeable in the building construction or building maintenance area, appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.

(9) A manager of physical plant operations whose responsibilities are or were in the operations and maintenance of physical facilities, chosen from among not more than three persons nominated by the North Carolina Association of Physical Plant Administrators, appointed by the General

§ 143-135.25(c) is set out twice. See notes.

Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

The members shall be appointed for staggered three-year terms: The initial appointments to the Commission shall be made within 15 days of the effective date of this act [April 14, 1987]. The initial terms of members appointed pursuant to subdivisions (1), (2), and (3) shall expire June 30, 1990; the initial terms of members appointed pursuant to (4), (5), and (6) shall expire June 30, 1989; and the initial terms of members appointed pursuant to (7), (8), and (9) shall expire June 30, 1988. Members may serve no more than six consecutive years. In making new appointments or filling vacancies, the Governor shall ensure that minorities and women are represented on the Commission.

Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of the unexpired terms. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

The chairman of the Commission shall be elected by the Commission. The Secretary of State shall serve as chairman until a chairman is elected.

(c) **(Applicable January 1, 1997)** The Commission shall consist of nine members qualified and appointed as follows:

(1) A licensed architect whose primary practice is or was in the design of buildings, chosen from among not more than three persons nominated by the North Carolina Chapter of the American Institute of Architects, appointed by the Governor.

(2) A registered engineer whose primary practice is or was in the design of engineering systems for buildings, chosen from among not more than three persons nominated by the Consulting Engineers Council and the Professional Engineers of North Carolina, appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.

(3) A licensed building contractor whose primary business is or was in the construction of buildings, or an employee of a company holding a general contractor's license, chosen from among not more than three persons nominated by the Carolinas AGC (Associated General Contractors), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(4) A licensed electrical contractor whose primary business is or was in the installation of electrical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Electrical Contractors, and the Carolinas Electrical Contractors' Association, appointed by the Governor.

(5) A public member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) A licensed mechanical contractor whose primary business is or was in the installation of mechanical systems for build-

§ 143-135.25(c) is set out twice. See notes.

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ings, chosen from among not more than three persons nominated by the North Carolina Association of Plumbing, Heating, Cooling Contractors, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(7) An employee of the university system currently involved in the capital facilities development process, chosen from among not more than three persons nominated by the Board of Governors of The University of North Carolina, appointed by the Governor.

(8) A public member who is knowledgeable in the building construction or building maintenance area, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(9) A manager of physical plant operations whose responsibilities are or were in the operations and maintenance of physical facilities, chosen from among not more than three persons nominated by the North Carolina Association of Physical Plant Administrators, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

The members shall be appointed for staggered three-year terms: The initial appointments to the Commission shall be made within 15 days of the effective date of this act [April 14, 1987]. The initial terms of members appointed pursuant to subdivisions (1), (2), and (3) shall expire June 30, 1990; the initial terms of members appointed pursuant to (4), (5), and (6) shall expire June 30, 1989; and the initial terms of members appointed pursuant to (7), (8), and (9) shall expire June 30, 1988. Members may serve no more than six consecutive years. In making new appointments or filling vacancies, the Governor shall ensure that minorities and women are represented on the Commission.

Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of the unexpired terms. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

The chairman of the Commission shall be elected by the Commission. The Secretary of State shall serve as chairman until a chairman is elected.

(d) The Commission shall meet at least four times a year on or about January 15, April 15, July 15, and October 15. The Commission shall also meet upon the call of the chairman, or upon call of at least five members. The Secretary of State shall call the first meeting within 30 days of the effective date of this act; the first order of business at the first meeting shall be the election of a chairman by the Commission.

(e) Members of the Commission who are not State officers or employees shall receive per diem of one hundred dollars ($100.00) a day when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. Members who are State officers or employees shall be reimbursed for travel and subsistence as provided in G.S. 138-6. (1987, c. 71, s. 1; 1989, c. 42; 1991, c. 314, s. 1; 1991 (Reg. Sess., 1992), c. 893, s. 2; 1995, c. 367, s. 9; c. 490, s. 52.)

Subsection (c) Set Out Twice — The first version of subsection (c) set out above is applicable until January 1, 1997. The second version of subsection (c) set out above is applicable January 1, 1997.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — Session Laws 1995, c. 367, s. 9, effective October 1, 1995, added "and to perform the duties created under this Article" to the end of subsection (a).

Session Laws 1995, c. 490, s. 52, added "Pro Tempore" in subdivisions (c)(2), (c)(5), and (c)(8). For the applicability of this amendment, see editor's note.

§ 143-135.26. Powers and duties of the Commission.

The State Building Commission shall have the following powers and duties with regard to the State's capital facilities development and management program:

(1) To adopt rules establishing standard procedures and criteria to assure that the designer selected for each State capital improvement project and the consultant selected for planning and studies of an architectural and engineering nature associated with a capital improvement project or a future capital improvement project has the qualifications and experience necessary for that capital improvement project or the proposed planning or study project. The rules shall provide that the State Building Commission, after consulting with the funded agency, is responsible and accountable for the final selection of the designer and the final selection of the consultant except when the General Assembly or The University of North Carolina is the funded agency. When the General Assembly is the funded agency, the Legislative Services Commission is responsible and accountable for the final selection of the designer and the final selection of the consultant, and when the University is the funded agency, it shall be subject to the rules adopted hereunder, except it is responsible and accountable for the final selection of the designer and the final selection of the consultant. All designers and consultants shall be selected within 60 days of the date funds are appropriated for a project by the General Assembly or the date of project authorization by the Director of the Budget; provided, however, the State Building Commission may grant an exception to this requirement upon written request of the funded agency if (i) no site was selected for the project before the funds were appropriated or (ii) funds were appropriated for advance planning only.

The State Building Commission shall submit a written report to the Joint Legislative Commission on Governmental Operations on the Commission's selection of a designer for a project within 30 days of selecting the designer.

(2) To adopt rules for coordinating the plan review, approval, and permit process for State capital improvement projects.

(3) To adopt rules for establishing a post-occupancy evaluation, annual inspection and preventive maintenance program for all State buildings.

(4) To develop procedures for evaluating the work performed by designers and contractors on State capital improvement projects and those community college buildings, as defined in G.S. 143-336, requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129, and for use of the evaluations as a factor affecting designer selections and determining qualification of contractors to bid on State capital improvement projects and community college buildings.

(5) To continuously study and recommend ways to improve the effectiveness and efficiency of the State's capital facilities development and management program.

(6) To request designers selected prior to April 14, 1987, whose plans for the projects have not been approved to report to the Commission on their progress on the projects. The Department of Administration shall provide the Commission with a list of all such projects.

(7) To appoint an advisory board, if the Commission deems it necessary, to assist the Commission in its work. No one other than the Commission may appoint an advisory board to assist or advise it in its work; and

(8) To review the State's provisions for ensuring the safety and health of employees involved with State capital improvement projects, and to recommend to the appropriate agencies and to the General Assembly, after consultation with the Commissioner of Labor, changes in the terms and conditions of construction contracts, State regulations, or State laws that will enhance employee safety and health on these projects.

(9) Effective July 1, 1996, to authorize a State agency, a local governmental unit, or any other entity subject to the provisions of G.S. 143-129 to use a method of contracting not authorized under G.S. 143-128, including the use of the single-prime contracting system without soliciting bids under both the single and separate prime contract systems. An authorization under this subdivision for an alternative contracting method shall be granted only under the following conditions:
  a. An authorization shall apply only to a single project.
  b. The entity seeking authorization must demonstrate to the Commission that the alternative contracting method is necessary because the project cannot be reasonably completed under the methods authorized under G.S. 143-128 or for such other reasons as the Commission, pursuant to its rules and criteria, deems appropriate and in the public's interest.
  c. The authorization must be approved by two- thirds of the members of the Commission present and voting.

The Commission shall not waive the requirements of G.S. 143-129 or G.S. 143-132 for public contracts unless otherwise authorized by law.

The Commission shall submit an annual report of its activities to the Governor and the Joint Legislative Commission on Governmental Operations. (1987, c. 71, s. 1; c. 721, s. 2; c. 830, s. 79(a); 1989, c. 50; 1989 (Reg. Sess., 1990), c. 889; 1991 (Reg. Sess., 1992), c. 893, s. 1; 1993, c. 561, s. 29; 1995, c. 367, s. 10.)

Editor's Note. —

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Effect of Amendments. — The 1995 amendment, effective June 30, 1995, added subdivision (9).

ARTICLE 9.

Building Code Council and Building Code.

§ 143-138. North Carolina State Building Code.

(a) Preparation and Adoption. — The Building Code Council is hereby empowered to prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Prior to the adoption of this Code, or any part thereof, the Council shall hold at least one public hearing. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in Raleigh, said notice to be published the first time not less than 15 days prior to the date fixed for said hearing. The Council may hold such other public hearings and give such other notice as it may deem necessary.

The Council shall request the Office of State Budget and Management to prepare a fiscal note for a proposed Code change that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Council shall not take final action on a proposed Code change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared.

(b) Contents of the Code. — The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building rules applicable to farm buildings located outside the building-rules jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,
(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and
(3) Any rules relating to sanitation adopted by the Commission for Health Services or the Department of Environment, Health, and Natural Resources which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the

Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements.

(c) Standards to Be Followed in Adopting the Code. — All regulations contained in the North Carolina State Building Code shall have a reasonable and substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed liberally to those ends. Requirements of the Code shall conform to good engineering practice, as evidenced generally by the requirements of the National Building Code of the American Insurance Association, formerly the National Board of Fire Underwriters, the Southern Standard Building Code of the Southern Building Code Congress, the Uniform Building Code of the Pacific Coast Building Officials Conference, the Basic Building Code of the Building Officials Conference of America, Inc., the National Electric Code, the Life Safety Code and Fire Prevention Code of the National Fire Protection Association, the American Standard Safety Code for Elevators, Dumbwaiters, and Escalators, the Boiler Code of the American Society of Mechanical Engineers, Standards of the American Insurance Association for the Installation of Gas Piping and Gas Appliances in Buildings, and standards promulgated by the United States of America Standards Institute, formerly the American Standards Association, Underwriters' Laboratories, Inc., and similar national agencies engaged in research concerning strength of materials, safe design, and other factors bearing upon health and safety.

(d) Amendments of the Code. — The Building Code Council may from time to time revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code.

(e) Effect upon Local Codes. — The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. However, any political subdivision of the State may adopt a building code or building rules and regulations governing construction or a fire prevention code within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. While it remains effective, such approval shall be taken as conclusive evidence that a local code or local regulations supersede the State Building Code in its particular political subdivision. Whenever the Building Code Council adopts an amendment to the State Building Code, it shall consider any previously approved local regulations dealing with the same general matters, and it shall have authority to withdraw its approval of any such local code or regulations unless the local governing body makes such appropriate amendments to that local code or regulations as it may direct. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434.

(f) Repealed by Session Laws 1989, c. 681, s. 3, effective September 1, 1989.

(g) Publication and Distribution of Code. — The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1

OFFICIAL OR AGENCY	NUMBER OF COPIES
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1
Department of Environment, Health, and Natural Resources	1
Department of Human Resources	1
Board of Transportation	1
Utilities Commission	1
Department of Administration	1
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Clerk of the Superior Court	1 each
Department of Cultural Resources [State Library]	5
Supreme Court Library	2
Legislative Library	1
Schools	
All state-supported colleges and universities in the State of North Carolina	* 1 each
Local Officials	
Clerks of the Superior Courts	1 each
Chief Building Inspector of each incorporated municipality or county	1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public.

(h) Violations. — Any person who shall be adjudged to have violated this Article or the North Carolina State Building Code, except for violations of occupancy limits established by either, shall be guilty of a Class 3 misdemeanor and shall upon conviction only be liable to a fine, not to exceed fifty dollars ($50.00), for each offense. Each 30 days that such violation continues shall constitute a separate and distinct offense. Violation of occupancy limits established pursuant to the North Carolina State Building Code shall be a Class 3 misdemeanor. Any violation incurred more than one year after another conviction for violation of the occupancy limits shall be treated as a first offense for purposes of establishing and imposing penalties.

(i) Section 1008 of Chapter X of Volume 1 of the North Carolina State Building Code, Title "Special Safety to Life Requirements Applicable to Existing High-Rise Buildings" as adopted by the North Carolina State Building Code Council on March 9, 1976, as ratified and adopted as follows:

SECTION 1008-SPECIAL SAFETY TO LIFE REQUIREMENTS APPLICABLE TO EXISTING HIGH-RISE BUILDINGS

1008 — GENERAL.

(a) Applicability. — Within a reasonable time, as fixed by "written order" of the building official, and except as otherwise provided in

subsection (j) of this section every building the [then] existing, that qualifies for classification under Table 1008.1 shall be considered to be a high-rise building and shall be provided with safety to life facilities as hereinafter specified. All other buildings shall be considered as low-rise. NOTE: The requirements of Section 1008 shall be considered as minimum requirements to provide for reasonable safety to life requirements for existing buildings and where possible, the owner and designer should consider the provisions of Section 506 applicable to new high-rise buildings.

(b) Notification of Building Owner. — The Department of Insurance will send copies of amendments adopted to all local building officials with the suggestion that all local building officials transmit to applicable building owners in their jurisdiction copies of adopted amendments, within six months from the date the amendments are adopted, with the request that each building owner respond to the local building official how he plans to comply with these requirements within a reasonable time.

NOTE: Suggested reasonable time and procedures for owners to respond to the building official's request is as follows:

(1) The building owner shall, upon receipt of written request from the building official on compliance procedures within a reasonable time, submit an overall plan required by 1008(c) below within one year and within the time period specified in the approved overall plan, but not to exceed five years after the overall plan is approved, accomplish compliance with this section, as evidenced by completion of the work in accordance with approved working drawings and specifications and by issuance of a new Certificate of Compliance by the building official covering the work. Upon approval of building owner's overall plan, the building official shall issue a "written order", as per 1008(a) above, to comply with Section 1008 in accordance with the approved overall plan.

(2) The building official may permit time extensions beyond five years to accomplish compliance in accordance with the overall plan when the owner can show just cause for such extension of time at the time the overall plan is approved.

(3) The local building official shall send second request notices as per 1008(b) to building owners who have made no response to the request at the end of six months and a third request notice to no response building owners at the end of nine months.

(4) If the building owner makes no response to any of the three requests for information on how the owner plans to comply with Section 1008 within 12 months from the first request, the building official shall issue a "written order" to the building owner to provide his building with the safety to life facilities as required by this section and to submit an overall plan specified by (1) above within six months with the five-year time period starting on the date of the "written order".

(5) For purposes of this section, the Construction Section of the Division of Facility Services, Department of Human Resources, will notify all non-State owned I-Institutional buildings requiring licensure by the Division of Facility Services and coordinate compliance requirements with the Department of Insurance and the local building official.

(c) Submission of Plans and Time Schedule for Completing Work. — Plans and specifications, but not necessarily working drawings covering the work necessary to bring the building into compliance with this section shall be submitted to the building official within a reasonable time. (See suggested time in NOTE of Section 1008(b) above). A time schedule for accomplishing the work, including the preparation of working drawings and specifications shall be included. Some of the work may require longer periods of time to accomplish than others, and this shall be reflected in the plan and schedule.

NOTE: Suggested Time Period For Compliance:

SUGGESTED TIME PERIOD FOR COMPLIANCE

ITEM	CLASS I (SECTION)	CLASS II (SECTION)	CLASS III (SECTION)	TIME FOR COMPLETION
Signs in Elevator Lobbies and Elevator Cabs	1008.2(h)	1008.3(h)	1008.4(h)	180 days
Emergency Evacuation Plan	1008(b) NOTE:			180 days
Corridor Smoke Detectors (Includes alternative door closers)	1008.2(c)	1008.3(c)	1008.4(c)	1 year
Manual Fire Alarm	1008.2(a)	1008.3(a)	1008.4(a)	1 year
Voice Communication System Required	1008.2(b)	1008.3(b)	1008.4(b)	2 years
Smoke Detectors Required	1008.2(c)	1008.3(c)	1008.4(c)	1 year
Protection and Fire Stopping for Vertical Shafts	1008.2(f)	1008.3(f)	1008.4(f)	3 years
Special Exit Requirements-Number, Location and Illumination to be in accordance with Section 1007	1008.2(e)	1008.3(e)	1008.4(e)	3 years
Emergency Electrical Power Supply	1008.2(d)	1008.3(d)	1008.4(d)	4 years
Special Exit Facilities Required	1008.2(e)	1008.3(e)	1008.4(e)	5 years
Compartmentation for Institutional Buildings	1008.2(f)	1008.3(f)	1008.4(f)	5 years
Emergency Elevator Requirements	1008.2(h)	1008.3(h)	1008.4(h)	5 years
Central Alarm Facility Required		1008.3(i)	1008.4(i)	5 years
Areas of Refuge Required on Every Eighth Floor			1008.4(j)	5 years
Smoke Venting			1008.4(k)	5 years
Fire Protection of Electrical Conductors			1008.4(l)	5 years
Sprinkler System Required			1008.4(m)	5 years

(d) Building Official Notification of Department of Insurance. — The building official shall send copies of written notices he sends to building owners to the Engineering and Building Codes Division for

their files and also shall file an annual report by August 15th of each year covering the past fiscal year setting forth the work accomplished under the provisions of this section.

(e) Construction Changes and Design of Life Safety Equipment. — Plans and specifications which contain construction changes and design of life safety equipment requirements to comply with provisions of this section shall be prepared by a registered architect in accordance with provisions of Chapter 83A of the General Statutes or by a registered engineer in accordance with provisions of Chapter 89C of the General Statutes or by both an architect and engineer particularly qualified by training and experience for the type of work involved. Such plans and specifications shall be submitted to the Engineering and Building Codes Division of the Department of Insurance for approval. Plans and specifications for I-Institutional buildings licensed by the Division of Facility Services as noted in (b) above shall be submitted to the Construction Section of that Division for review and approval.

(f) Filing of Test Reports and Maintenance on Life Safety Equipment. — The engineer performing the design for the electrical and mechanical equipment, including sprinkler systems, must file the test results with the Engineering and Building Codes Division of the Department of Insurance, or to the agency designated by the Department of Insurance, that such systems have been tested to indicate that they function in accordance with the standards specified in this section and according to design criteria. These test results shall be a prerequisite for the Certificate of Compliance required by (b) above. Test results for I-Institutional shall be filed with the Construction Section, Division of Facility Services. It shall be the duty and responsibility of the owners of Class I, II and III buildings to maintain smoke detection, fire detection, fire control, smoke removal and venting as required by this section and similar emergency systems in proper operating condition at all times. Certification of full tests and inspections of all emergency systems shall be provided by the owner annually to the fire department.

(g) Applicability of Chapter X and Conflicts with Other Sections. — The requirements of this section shall be in addition to those of Sections 1001 through 1007; and in case of conflict, the requirements affording the higher degree of safety to life shall apply, as determined by the building official.

(h) Classes of Buildings and Occupancy Classifications. — Buildings shall be classified as Class I, II or III according to Table 1008.1. In the case of mixed occupancies, for this purpose, the classification shall be the most restrictive one resulting from the application of the most prevalent occupancies to Table 1008.1.

FOOTNOTE: Emergency Plan. — Owners, operators, tenants, administrators or managers of high-rise buildings should consult with the fire authority having jurisdiction and establish procedures which shall include but not necessarily be limited to the following:

(1) Assignment of a responsible person to work with the fire authority in the establishment, implementation and maintenance of the emergency pre-fire plan.

(2) Emergency plan procedures shall be supplied to all tenants and shall be posted conspicuously in each hotel guest room, each office area, and each schoolroom.

(3) Submission to the local fire authority of an annual renewal or amended emergency plan.

(4) Plan should be completed as soon as possible.

1008.1 — ALL EXISTING BUILDINGS SHALL BE CLASSIFIED AS CLASS I, II AND III ACCORDING TO TABLE 1008.1.

TABLE 1008.1

Scope

CLASS	OCCUPANCY GROUP (3)(4)	OCCUPIED FLOOR ABOVE AVERAGE GRADE EXCEEDING HEIGHT (2)
CLASS I	Group R-Residential Group B-Business Group E-Educational Group A-Assembly Group H-Hazardous Group I-Institutional-Restrained	60′ but less than 120′ above average grade or 6 but less than 12 stories above average grade.
	Group I-Institutional-Unrestrained	36′ but less than 60′ above average grade or 3 but less than 6 stories above average grade.
CLASS II	Group R-Residential Group B-Business Group E-Educational Group A-Assembly Group H-Hazardous Group I-Institutional-Restrained	120′ but less than 250′ above average grade or 12 but less than 25 stories above average grade.
	Group I-Institutional-Unrestrained	60′ but less than 250′ above average grade or 6 but less than 25 stories above average grade.
CLASS III	Group R-Residential Group B-Business Group E-Educational Group I-Institutional Group A-Assembly Group H-Hazardous	250′ or 25 stories above average grade.

NOTE 1: The entire building shall comply with this section when the building has an occupied floor above the height specified, except that portions of the buildings which do not exceed the height specified are exempt from this section, subject to the following provisions:

(a) Low-rise portions of Class I buildings must be separated from high-rise portions by one-hour construction.

(b) Low-rise portions of Class II and III buildings must be separated from high-rise portions by two-hour construction.

(c) Any required exit from the high-rise portion which passes through the low-rise portions must be separated from the low-rise portion by the two-hour construction.

NOTE 2: The height described in Table 1008.1 shall be measured between the average grade outside the building and the finished floor of the top occupied story.

NOTE 3: Public parking decks meeting the requirements of Section 412.7 and less than 75 feet in height are exempt from the requirements of this section when there is no other occupancy above or below such deck.

NOTE 4: Special purpose equipment buildings, such as telephone equipment buildings housing the equipment only, with personnel occupant load limited to persons required to maintain the equipment may be exempt from any or all of these requirements at the discretion of the Engineering and Building Codes Division provided such special purpose equipment building is separated from other portions of the building by two-hour fire rated construction.

1008.2—REQUIREMENTS FOR EXISTING CLASS I BUILDINGS.

All Class I buildings shall be provided with the following:

(a) An approved manual fire alarm system, meeting the requirements of Section 1125 and applicable portions of NFPA 71, 72A, 72B, 72C or 72D, shall be provided unless the building is fully sprinklered or equipped with an approved automatic fire detection system connected to the fire department.

(b) All Class I buildings shall meet the requirements of Sections 1001-1007.

(c) Smoke Detectors Required. — At least one approved listed smoke detector tested in accordance with UL-167, capable of detecting visible and invisible particles of combustion shall be installed as follows:

(1) All buildings classified as institutional, residential and assembly occupancies shall be provided with listed smoke detectors in all required exit corridors spaced no further than 60′ on center or more than 15′ from any wall. Exterior corridors open to the outside are not required to comply with this requirement. If the corridor walls have one-hour fire resistance rating with all openings protected with 1-¾ inch solid wood core or hollow metal door or equivalent and all corridor doors are equipped with approved self-closing devices, the smoke detectors in the corridor may be omitted. Detectors in corridors may be omitted when each dwelling unit is equipped with smoke detectors which activate the alarm system.

(2) In every mechanical equipment, boiler, electrical equipment, elevator equipment or similar room unless the room is sprinklered or the room is separated from other areas by two-hour fire resistance construction with all openings therein protected with approved fire dampers and Class B fire doors. (Approved listed fire (heat) detectors may be submitted for these rooms.)

(3) In the return air portion of every air conditioning and mechanical ventilation system that serves more than one floor.

(4) The activation of any detector shall activate the alarm system, and shall cause such other operations as required by this Code.

(5) The annunciator shall be located near the main entrance or in a central alarm and control facility.

NOTE 1: Limited area sprinklers may be supplied from the domestic water system provided the domestic water system is designed to support the design flow of the largest number of sprinklers in any one of the enclosed areas. When supplied by the domestic water system, the maximum number of sprinklers in any one enclosed room or area shall not exceed 20 sprinklers which must totally protect the room or area.

(d) Emergency Electrical Power Supply. — An emergency electrical power supply shall be provided to supply the following for a period of not less than two hours. An emergency electrical power supply may consist of generators, batteries, a minimum of two remote connections to the public utility grid supplied by multiple generating stations, a combination of the above.

(1) Emergency, exit and elevator cab lighting.

(2) Emergency illumination for corridors, stairs, etc.

(3) Emergency Alarms and Detection Systems. — Power supply for fire alarm and fire detection. Emergency power does not need to be connected to fire alarm or detection systems when they are equipped with their own emergency power supply from float or trickle charge battery in accordance with NFPA standards.

(e) Special Exit Requirements. — Exits and exitways shall meet the following requirements:

(1) Protection of Stairways Required. — All required exit stairways shall be enclosed with noncombustible one-hour fire rated construction with a minimum of 1-¾ inch solid core wood door or hollow metal door or 20 minute UL listed doors as entrance thereto. (See Section 1007.5).

(2) Number and Location of Exits. — All required exit stairways shall meet the requirements of Section 1007 to provide for proper number and location and proper fire rated enclosures and illumination of and designation for means of egress.

(3) Exit Outlets. — Each required exit stair shall exit directly outside or through a separate one-hour fire rated corridor with no openings except the necessary openings to exit into the fire rated corridor and from the fire rated corridor and such openings shall be protected with 1-¾ inch solid wood core or hollow metal door or equivalent unless the exit floor level and all floors below are equipped with an approved automatic sprinkler system meeting the requirements of NFPA No. 13.

(f) Smoke Compartments Required for I-Institutional Buildings. — Each occupied floor shall be divided into at least two compartments with each compartment containing not more than 30 institutional occupants. Such compartments shall be subdivided with one-half hour fire rated partitions which shall extend from outside wall to outside wall and from floor to and through any concealed space to the floor slab or roof above and meet the following requirements:

(1) Maximum area of any smoke compartment shall be not more than 22,500 square feet in area with both length and width limited to 150 feet.

(2) At least one smoke partition per floor regardless of building size forming two smoke zones of approximately equal size.

(3) All doors located in smoke partitions shall be properly gasketed to insure a substantial barrier to the passage of smoke and gases.

(4) All doors located in smoke partitions shall be no less than 1-¾ inch thick solid core wood doors with UL, ¼ inch wire glass panel in metal frames. This glass panel shall be a minimum of 100 square inches and a maximum of 720 square inches.

(5) Every door located in a smoke partition shall be equipped with an automatic closer. Doors that are normally held in the open position shall be equipped with an electrical device that shall, upon actuation of the fire alarm or smoke detection system in an adjacent zone, close the doors in that smoke partition.

(6) Glass in all corridor walls shall be ¼″, UL approved, wire glass in metal frames in pieces not to exceed 1296 square inches.

(7) Doors to all patient rooms and treatment areas shall be a minimum of 1-¾ inch solid core wood doors except in fully sprinklered buildings.

(g) Protection and Fire Stopping for Vertical Shafts. — All vertical shafts extending more than one floor including elevator shafts, plumbing shafts, electrical shafts and other vertical openings shall be protected with noncombustible one-hour fire rated construction with shaft wall openings protected with 1-¾ inch solid core wood door or hollow metal door. Vertical shafts (such as electrical wiring shafts) which have openings such as ventilated doors on each floor must be fire stopped at the floor slab level with noncombustible materials having a fire resistance rating not less than one hour to provide an effective barrier to the passage of smoke, heat and gases from floor to floor through such shafts.

EXCEPTION: Shaft wall openings protected in accordance with NFPA No. 90A and openings connected to metal ducts equipped with approved fire dampers within the shaft wall openings do not need any additional protection.

(h) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. The required emergency sign shall be readable at all times and shall be a minimum of ½″ high block letters with the words: “IN CASE OF FIRE DO NOT USE ELEVATOR — USE THE EXIT STAIRS” or other words to this effect.

1008.3 — REQUIREMENTS FOR EXISTING CLASS II BUILDINGS.

All Class II buildings must meet the following requirements:

(a) Manual Fire Alarm. — Provide manual fire alarm system in accordance with Section 1008.2(a). In addition, buildings so equipped with sprinkler alarm system or automatic fire detection system must have at least one manual fire alarm station near an exit on each floor as a part of such sprinkler or automatic fire detection and alarm system. Such manual fire alarm systems shall report a fire by floor.

(b) Voice Communication System Required. — An approved voice communication system or systems operated from the central alarm and control facilities shall be provided and shall consist of the following:

(1) One-Way Voice Communication Public Address System Required. — A one-way voice communication system shall be established on a selective basis which can be heard clearly by all occupants in all exit stairways, elevators, elevator lobbies, corridors, assembly rooms and tenant spaces.

NOTE 1: This system shall function so that in the event of one circuit or speaker being damaged or out of service, the remainder of the system shall continue to be operable.

NOTE 2: This system shall include provisions for silencing the fire alarm devices when the loud speakers are in use, but only after the fire alarm devices have operated initially for not less than 15 seconds.

(c) Smoke Detectors Required. — Smoke detectors are required as per Section 1008.2(c). The following are additional requirements:

(1) Storage rooms larger than 24 square feet or having a maximum dimension of over eight feet shall be provided with approved fire detectors or smoke detectors installed in an approved manner unless the room is sprinklered.

(2) The actuation of any detectors shall activate the fire alarm system.

(d) Emergency Electrical Power Supply. — An emergency electrical power supply shall be provided to supply the following for a period of not less than two hours. An emergency electrical power supply may consist of generators, batteries, a minimum of two remote connections to the public utility grid supplied by multiple generating stations, a combination of the above. Power supply shall furnish power for items listed in Section 1008.2(d) and the following:

(1) Pressurization Fans. — Fans to provide required pressurization, smoke venting or smoke control for stairways.

(2) Elevators. — The designated emergency elevator.

(e) Special Exit Facilities Required. — The following exit facilities are required:

(1) The special exit facilities required in 1008.2(e) are required. All required exit stairways shall be enclosed with noncombustible two-hour fire rated construction with a minimum of 1-½ hour Class B-labeled doors as entrance thereto: (See Section 1007.5).

(2) Smoke-Free Stairways Required. — At least one stairway shall be a smoke free stairway in accordance with Section 1104.2 or at least one stairway shall be pressurized to between 0.15 inch and 0.35 inch water column pressure with all doors closed. Smoke-free stairs and pressurized stairs shall be identified with signs containing letters a minimum of ½ inch high containing the words "PRIMARY EXIT STAIRS" unless all stairs are smoke free or pressurized. Approved exterior stairways meeting the requirements of Chapter XI or approved existing fire escapes meeting the requirements of Chapter X with all openings within 10 feet protected with wire glass or other properly designed stairs protected to assure similar smoke-free vertical egress may be permitted. All required exit stairways shall also meet the requirements of Section 1008.2(e).

(3) If stairway doors are locked from the stairway side, keys shall be provided to unlock all stairway doors on every eighth floor leading into the remainder of the building and the key shall be located in a glass enclosure adjacent to the door at each floor level (which may sound an alarm when the glass is broken). When the key unlocks the door, the hardware shall be of the type that remains unlocked after the key is removed. Other means, approved by the building official may be approved to enable occupants and fire fighters to readily unlock stairway doors on every eighth floor that may be locked from the stairwell side. The requirements of this section may be eliminated in smoke-

free stairs and pressurized stairs provided fire department access keys are provided in locations acceptable to the local fire authority.

(f) Compartmentation for I-Institutional Buildings Required. — See Section 1008.2(f).

(g) Protection and Fire Stopping for Vertical Shafts. — All vertical shafts extending more than one floor including elevator shafts, plumbing shafts, electrical shafts and other vertical openings shall be protected with noncombustible two-hour fire rated construction with Class B-labeled door except for elevator doors which shall be hollow metal or equivalent. All vertical shafts which are not so enclosed must be fire stopped at each floor slab with noncombustible materials having a fire resistance rating of not less than two hours to provide an effective barrier to the passage of smoke, heat and gases from floor to floor through such shaft.

EXCEPTION: Shaft wall openings protected in accordance with NFPA No. 90A and openings connected to metal ducts equipped with approved fire dampers within the shaft wall opening do not need any additional protection.

(h) Emergency Elevator Requirements.

(1) Elevator Recall. — Each elevator shall be provided with an approved manual return. When actuated, all cars taking a minimum of one car at a time, in each group of elevators having common lobby, shall return directly at normal car speed to the main floor lobby, or to a smoke-free lobby leading most directly to the outside. Cars that are out of service are exempt from this requirement. The manual return shall be located at the main floor lobby.

NOTE: Manually operated cars are considered to be in compliance with this provision if each car is equipped with an audible or visual alarm to signal the operator to return to the designated level.

(2) Identification of Emergency Elevator. — At least one elevator shall be identified as the emergency elevator and shall serve all floor levels. NOTE: This elevator will have a manual control in the cab which will override all other controls including floor call buttons and door controls.

(3) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. These required emergency signs shall be readable at all times and shall be a minimum of ½ inch high block letters with the words: "IN CASE OF FIRE DO NOT USE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

(i) Central Alarm Facility Required. — A central alarm facility accessible at all times to fire department personnel or attended 24 hours a day, shall be provided and shall contain the following:

(1) Facilities to automatically transmit manual and automatic alarm signals to the fire department either directly or through a signal monitoring service.

(2) Public service telephone.

(3) Fire detection and alarm systems annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received. These signals shall be both audible and visual with a silence switch for the audible.

NOTE: Detectors in HVAC systems used for fan shut down need not be annunciated.

(4) Master keys for access from all stairways to all floors.

(5) One-way voice emergency communications system controls.

1008.4 — REQUIREMENTS FOR EXISTING CLASS III BUILDINGS.

All Class III Buildings shall be provided with the following:

(a) Manual Fire Alarm System. — A manual fire alarm system meeting the requirements of Section 1008.3(a).

(b) Voice Communication System Required. — An approved voice communication system or systems operated from the central alarm and control facilities shall be provided and shall consist of the following:

(1) One-Way Voice Communication Public Address System Required. — A one-way voice communication system shall be established on a selective or general basis which can be heard clearly by all occupants in all elevators, elevator lobbies, corridors, and rooms or tenant spaces exceeding 1,000 sq. ft. in area.

NOTE 1: This system shall be designed so that in the event of one circuit or speaker being damaged or out of service the remainder of the system shall continue to be operable.

NOTE 2: This system shall include provisions for silencing the fire alarm devices when the loud speakers are in use, but only after the fire alarm devices have operated initially for not less than 15 seconds.

(2) Two-way system for use by both fire fighters and occupants at every fifth level in stairways and in all elevators.

(3) Within the stairs at levels not equipped with two-way voice communications, signs indicating the location of the nearest two-way device shall be provided.

NOTE: The one-way and two-way voice communication systems may be combined.

(c) Smoke Detectors Required. — Approved listed smoke detectors shall be installed in accordance with Section 1008.3(c) and in addition, such detectors shall terminate at the central alarm and control facility and be so designed that it will indicate the fire floor or the zone on the fire floor.

(d) Emergency Electrical Power Supply. — Emergency electrical power supply meeting the requirements of Section 1008.3(d) to supply all emergency equipment required by Section 1008.3(d) shall be provided and in addition, provisions shall be made for automatic transfer to emergency power in not more than ten seconds for emergency illumination, emergency lighting and emergency communication systems. Provisions shall be provided to transfer power to a second designated elevator located in a separate shaft from the primary emergency elevator. Any standpipe or sprinkler system serving occupied floor areas 400 feet or more above grade shall be provided with on-site generated power or diesel driven pump.

(e) Special Exit Requirements. — All exits and exitways shall meet the requirements of Section 1008.3(e).

(f) Compartmentation of Institutional Buildings Required. — See Section 1008.2(f).

(g) Protection and Fire Stopping for Vertical Shafts. — Same as Class II buildings. See Section 1008.3(g).

(h) Emergency Elevator Requirements.

(1) Primary Emergency Elevator. — At least one elevator serving all floors shall be identified as the emergency elevator with identification signs both outside and inside the elevator and shall be provided with emergency power to meet the requirements of Section 1008.3(c).

NOTE: This elevator will have a manual control in the cab which will override all other controls including floor call buttons and door controls.

(2) Elevator Recall. — Each elevator shall be provided with an approved manual return. When actuated, all cars taking a minimum of one car at a time, in each group of elevators having common lobby, shall return directly at normal car speed to the main floor lobby or to a smoke-free lobby leading most directly to the outside. Cars that are out of service are exempt from this requirement. The manual return shall be located at the main floor lobby.

NOTE: Manually operated cars are considered to be in compliance with this provision if each car is equipped with an audible or visual alarm to signal the operator to return to the designated level.

(3) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. These required emergency signs shall be readable at all times and have a minimum of ½″ high block letters with the words: "IN CASE OF FIRE, UNLESS OTHERWISE INSTRUCTED, DO NOT USE THE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

(4) Machine Room Protection. — When elevator equipment located above the hoistway is subject to damage from smoke particulate matter, cable slots entering the machine room shall be sleeved beneath the machine room floor to inhibit the passage of smoke into the machine room.

(5) Secondary Emergency Elevator. — At least one elevator located in separate shaft from the Primary Emergency Elevator shall be identified as the "Secondary Emergency Elevator" with identification signs both outside and inside the elevator. It will serve all occupied floors above 250 feet and shall have all the same facilities as the primary elevator and will be capable of being transferred to the emergency power system.

NOTE: Emergency power supply can be sized for nonsimultaneous use of the primary and secondary emergency elevators.

(i) Central Alarm and Control Facilities Required.

(1) A central alarm facility accessible at all times to Fire Department personnel or attended 24 hours a day, shall be provided. The facility shall be located on a completely sprinklered floor or shall be enclosed in two-hour fire resistive construction. Openings are permitted if protected by listed 1-½ hour Class B-labeled closures or water curtain devices capable of a minimum discharge of three gpm per lineal foot of opening. The facility shall contain the following:

(i) Facilities to automatically transmit manual and automatic alarm signals to the fire department either directly or through a signal monitoring service.
(ii) Public service telephone.
(iii) Direct communication to the control facility.
(iv) Controls for the voice communication systems.
(v) Fire detection and alarm system annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received, those signals, shall be both audible and visual with a silence switch for the audible.

NOTE: Detectors in HVAC systems used for fan shut down need not be annunciated.

(2) A control facility (fire department command station) shall be provided at or near the fire department response point and shall contain the following:
(i) Elevator status indicator.
NOTE: Not required in buildings where there is a status indicator at the main elevator lobby.
(ii) Master keys for access from all stairways to all floors.
(iii) Controls for the two-way communication system.
(iv) Fire detection and alarm system annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received.
(v) Direct communication to the central alarm facility.

(3) The central alarm and control facilities may be combined in a single approved location. If combined, the duplication of facilities and the direct communication system between the two may be deleted.

(j) Areas of Refuge Required. — Class III buildings shall be provided with a designated "area of refuge" at the 250 ft. level and on at least every eighth floor or fraction thereof above that level to be designed so that occupants above the 250 ft. level can enter at all times and be safely accommodated in floor areas meeting the following requirements unless the building is completely sprinklered:

(1) Identification and Size. — These areas of refuge shall be identified on the plans and in the building as necessary. The area of refuge shall provide not less than 3 sq. ft. per occupant for the total number of occupants served by the area based on the occupancy content calculated by Section 1105. A minimum of two percent (2%) of the number of occupants on each floor shall be assumed to be handicapped and no less than 16 sq. ft. per handicapped occupant shall be provided. Smoke proof stairways meeting the requirements of Section 1104.2 and pressurized stairways meeting the requirements of Section 1108.3(e)(2) may be used for ambulatory occupants at the rate of 3 sq. ft. of area of treads and landings per person, but in no case shall the stairs count for more than one-third of the total occupants. Doors leading to designated areas of refuge from stairways or other areas of the building shall not have locking hardware or shall be automatically unlocked upon receipt of any manual or automatic fire alarm signal.

(2) Pressurized. — The area of refuge shall be pressurized with 100% fresh air utilizing the maximum capacity of existing

mechanical building air conditioning system without recirculation from other areas or other acceptable means of providing fresh air into the area.

(3) Fire Resistive Separation. — Walls, partitions, floor assemblies and roof assemblies separating the area of refuge from the remainder of the building shall be noncombustible and have a fire resistance rating of not less than one hour. Duct penetrations shall be protected as required for penetrations of shafts. Metallic piping and metallic conduit may penetrate or pass through the separation only if the openings around the piping or conduit are sealed on each side of the penetrations with impervious noncombustible materials to prevent the transfer of smoke or combustion gases from one side of the separation to the other. The fire door serving as a horizontal exit between compartments shall be so installed, fitted and gasketed to provide a barrier to the passage of smoke.

(4) Access Corridors. — Any corridor leading to each designated area of refuge shall be protected as required by Sections 1104 and 702. The capacity of an access corridor leading to an area of refuge shall be based on 150 persons per unit width as defined in Section 1105.2. An access corridor may not be less than 44 inches in width. The width shall be determined by the occupant content of the most densely populated floor served. Corridors with one-hour fire resistive separation may be utilized for area of refuge at the rate of three sq. ft. per ambulatory occupant provided a minimum of one cubic ft. per minute of outside air per square foot of floor area is introduced by the air conditioning system.

(5) Penetrations. — The continuity of the fire resistance at the juncture of exterior walls and floors must be maintained.

(k) Smoke Venting. — Smoke venting shall be accomplished by one of the following methods in nonsprinklered buildings:

(1) In a nonsprinklered building, the heating, ventilating and air conditioning system shall be arranged to exhaust the floor of alarm origin at its maximum exhausting capacity without recirculating air from the floor of alarm origin to any other floor. The system may be arranged to accomplish this either automatically or manually. If the air conditioning system is also used to pressurize the areas of refuge, this function shall not be compromised by using the system for smoke removal.

(2) Venting facilities shall be provided at the rate of 20 square feet per 100 lineal feet or 10 square feet per 50 lineal feet of exterior wall in each story and distributed around the perimeter at not more than 50 or 100 foot intervals openable from within the fire floor. Such panels and their controls shall be clearly identified.

(3) Any combination of the above two methods or other approved designs which will produce equivalent results and which is acceptable to the building official.

(l) Fire Protection of Electrical Conductors. — New electrical conductors furnishing power for pressurization fans for stairways, power for emergency elevators and fire pumps required by Section 1008.4(d) shall be protected by a two-hour fire rated horizontal or

vertical enclosure or structural element which does not contain any combustible materials. Such protection shall begin at the source of the electrical power and extend to the floor level on which the emergency equipment is located. It shall also extend to the emergency equipment to the extent that the construction of the building components on that floor permits. New electrical conductors in metal raceways located within a two-hour fire rated assembly without any combustible therein are exempt from this requirement.

(m) Automatic Sprinkler Systems Required.

(1) All areas which are classified as Group M-mercantile and Group H-hazardous shall be completely protected with an automatic sprinkler system.

(2) All areas used for commercial or institutional food preparation and storage facilities adjacent thereto shall be provided with an automatic sprinkler system.

(3) An area used for storage or handling of hazardous substances shall be provided with an automatic sprinkler system.

(4) All laboratories and vocational shops in Group E, Educational shall be provided with an automatic sprinkler system.

(5) Sprinkler systems shall be in strict accordance with NFPA No. 13 and the following requirements:
The sprinkler system must be equipped with a water flow and supervisory signal system that will transmit automatically a water flow signal directly to the fire department or to an independent signal monitoring service satisfactory to the fire department.

(j) Subsection (i) of this section does not apply to business occupancy buildings as defined in the North Carolina State Building Code except that evacuation plans as required on page 8, lines 2 through 16 [Section 1008, footnote following subsection (h)], and smoke detectors as required for Class I Buildings as required by Section 1008.2, page 11, lines 5 through 21 [Section 1008.2, subdivision (c)(1)]; Class II Buildings as required by Section 1008.3, page 17, lines 17 through 28 and page 18, lines 1 through 10 [Section 1008.3, subsections (c) and(d)]; and Class III Buildings, as required by Section 1008.4, lines 21 through 25 [Section 1008.4, subsection (c)] shall not be exempted from operation of this act as applied to business occupancy buildings, except that the Council shall adopt rules that allow a business occupancy building built prior to 1953 to have a single exit to remain if the building complies with the Building Code on or before December 31, 2006.

(k) For purposes of use in the Code, the term "Family Care Home" shall mean an adult care home having two to six residents.

(*l*) When any question arises as to any provision of the Code, judicial notice shall be taken of that provision of the Code. (1957, c. 1138; 1969, c. 567; c. 1229, ss. 2-6; 1971, c. 1100, ss. 1, 2; 1973, c. 476, ss. 84, 128, 138, 152; c. 507, s. 5; 1981, c. 677, s. 3; c. 713, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1282, s. 20.2D; c. 1348, s. 1; 1983, c. 614, s. 3; 1985, c. 576, s. 1; c. 622, s. 2; c. 666, s. 39; 1989, c. 25, s. 2; c. 681, ss. 2, 3, 9, 10, 18, 19; c. 727, ss. 157, 158; 1991 (Reg. Sess., 1992), c. 895, s. 1; 1993, c. 329, ss. 1, 3; c. 539, s. 1009; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 111, s. 1; c. 242, s. 1; c. 507, s. 27.8(r); c. 535, s. 30.)

Local Modification. — By virtue of Session Laws 1993 (Reg. Sess., 1994), c. 741, the local modification in Mecklenburg should be stricken from the main volume.

Editor's Note. — Fire protection code provisions were adopted by the North Carolina Building Code Council effective July 1, 1991. Therefore, the second version of subsection (e), as set out in the main volume, is now in effect.

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1995, c. 111, s. 4, effective May 29, 1995, provides that the amendment made by section 1 shall not be construed to imply that the Building Code Council did not have the authority contained in that amendment prior to the effective date of the amendment.

Session Laws 1995, c. 242, s. 2, provides that the Building Code Council shall adopt rules or amend the Building Code consistent with section 1 of this act on or before October 1, 1995.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provision of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 fiscal biennium."

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1995, c. 507, which amended this section, in s. 27.8(z) provides that the amendment is effective December 1, 1995, and is applicable to all rules for which a notice of rule making is published in the North Carolina Register on or after that date and to rule and Building Code changes that are initiated on or after that date and that are not subject to the rule-making procedures set out in Article 2A of Chapter 150B of the General Statutes.

Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. —

Session Laws 1995, c. 111, s. 1, effective May 29, 1995, added the third and fourth sentences in the second paragraph of subsection (b).

Session Laws 1995, c. 242, s. 1, effective June 14, 1995, added "except that the Council shall adopt rules that allow a business occupancy building built prior to 1953 to have a single exit to remain if the building complies with the Building Code on or before December 31, 2006" to the end of subsection (j).

Session Laws 1995, c. 507, s. 27.8 (r), effective December 1, 1995, added the second paragraph of subsection (a).

Session Laws 1995 c. 535, s. 30, effective October 1, 1995, substituted "an adult care home" for "domiciliary home" in subsection (k).

CASE NOTES

Legislative Intent to Protect the Health of the General Public. — The legislature's directions for the creation of the State Building Code and the Building Code Council's stated purposes for the different inspections under the Code evince an intent to protect the health of the general public. City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

Acts Shifting Responsibility for Enforcement of Code Unconstitutional. — Inspections pursuant to the State Building Code affect health and sanitation, thus, acts that altered the legislative directive of § 160A-411, that the city shall determine who will perform the inspections under the Code, were local legislation that shifted responsibility for enforcement of laws affecting the health of the public and were barred under Art. II, § 24 of the Constitution. City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

Quoted in City of New Bern v. New Bern-Craven County Bd. of Educ., 113 N.C. App. 98, 437 S.E.2d 655 (1993), temporary stay granted pending appeal, 335 N.C. 553 (1994).

ARTICLE 9A.

North Carolina Manufactured Housing Board — Manufactured Home Warranties.

§ 143-143.14. Notice and hearing.

(a) License suspensions, revocations, and renewal refusals are subject to the provisions of Chapter 150B of the General Statutes.

(b) Within 30 days after receipt of a notification that an application for a license has been denied, the applicant may make a written request for a review by a member of the Department staff designated by the chairman of the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written request for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome. (1981, c. 952, s. 2; 1987, c. 429, s. 19; 1993, c. 504, s. 34; 1993 (Reg. Sess., 1994), c. 678, s. 34.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 5, 1994, in subsection (b), substituted "applicant" for "Board" throughout the section, in the first sentence substituted "request" for "demand upon the Board" and inserted "the chairman of," and in the third sentence substituted "request" for "demand upon the Commissioner."

§ 143-143.24. Engaging in business without license a Class 1 misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 9B.

Uniform Standards Code for Manufactured Homes.

§ 143-151. Penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 9C.

North Carolina Code Officials Qualification Board.

§ 143-151.9. North Carolina Code Officials Qualification Board established; members; terms; vacancies.

(a) **(Applicable until January 1, 1997)** There is hereby established the North Carolina Code Officials Qualification Board in the Department of Insurance. The Board shall be composed of 20 members appointed as follows:

(1) One member who is a city or county manager;
(2) Two members, one of whom is an elected official representing a city over 5,000 population and one of whom is an elected official representing a city under 5,000 population;
(3) Two members, one of whom is an elected official representing a county over 40,000 population and one of whom is an elected official representing a county under 40,000 population;
(4) Two members serving as building officials with the responsibility for administering building, plumbing, electrical and heating codes, one of whom serves a county and one of whom serves a city;
(5) One member who is a registered architect;
(6) One member who is a registered engineer;
(7) Two members who are licensed general contractors, at least one of whom specializes in residential construction;
(8) One member who is a licensed electrical contractor;
(9) One member who is a licensed plumbing or heating contractor;
(10) One member selected from the faculty of the North Carolina State University School of Engineering and one member selected from the faculty of the School of Engineering of the North Carolina Agricultural and Technical State University;
(11) One member selected from the faculty of the Institute of Government;
(12) One member selected from the Department of Community Colleges;
(13) One member selected from the Division of Engineering and Building Codes in the Department of Insurance; and,
(14) One member who is a local government fire prevention inspector and one member who is a citizen of the State.

The various categories shall be appointed as follows: (1), (2), (3), and (14) by the Governor; (4), (5), and (6) by the Lieutenant Governor; (7), (8), and (9) by the Speaker of the House of Representatives; (10) by the deans of the respective schools of engineering of the named universities; (11) by the Director of the Institute of Government; (12) by the President of the Community College System; and (13) by the Commissioner of Insurance.

(a) **(Applicable January 1, 1997)** There is hereby established the North Carolina Code Officials Qualification Board in the Department of Insurance. The Board shall be composed of 20 members appointed as follows:

§ 143-151.9(a) is set out twice. See notes.

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(1) One member who is a city or county manager;
(2) Two members, one of whom is an elected official representing a city over 5,000 population and one of whom is an elected official representing a city under 5,000 population;
(3) Two members, one of whom is an elected official representing a county over 40,000 population and one of whom is an elected official representing a county under 40,000 population;
(4) Two members serving as building officials with the responsibility for administering building, plumbing, electrical and heating codes, one of whom serves a county and one of whom serves a city;
(5) One member who is a registered architect;
(6) One member who is a registered engineer;
(7) Two members who are licensed general contractors, at least one of whom specializes in residential construction;
(8) One member who is a licensed electrical contractor;
(9) One member who is a licensed plumbing or heating contractor;
(10) One member selected from the faculty of the North Carolina State University School of Engineering and one member selected from the faculty of the School of Engineering of the North Carolina Agricultural and Technical State University;
(11) One member selected from the faculty of the Institute of Government;
(12) One member selected from the Department of Community Colleges;
(13) One member selected from the Division of Engineering and Building Codes in the Department of Insurance; and,
(14) One member who is a local government fire prevention inspector and one member who is a citizen of the State.

The various categories shall be appointed as follows: (1), (2), (3), and (14) by the Governor; (4), (5), and (6) by the General Assembly upon the recommendation of the President Pro Tempore in accordance with G.S. 120-121; (7), (8), and (9) by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; (10) by the deans of the respective schools of engineering of the named universities; (11) by the Director of the Institute of Government; (12) by the President of the Community College System; and (13) by the Commissioner of Insurance.

(b) The members shall be appointed for staggered terms and the initial appointments shall be made prior to September 1, 1977, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: the members from subdivisions (1), (6) and (10) of subsection (a), and one member from subdivision (3).

For the terms of two years: the member from subdivision (11) of subsection (a), one member from subdivision (2), one member from subdivision (4), one member from subdivision (7), and one member from subdivision (14).

For the terms of three years: the members from subdivisions (8) and (12) of subsection (a), one member from subdivision (2), one member from subdivision (4), and one member from subdivision (14).

For the terms of four years: the members from subdivision (5), (9) and (13) of subsection (a), one member from subdivision (3), and one member from subdivision (7).

Thereafter, as the term of each member expires, his successor shall be appointed for a term of four years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the Governor.

Members of the Board who are public officers shall serve ex officio and shall perform their duties on the Board in addition to the duties of their office.

(c) Vacancies in the Board occurring for any reason shall be filled for the unexpired term by the person making the appointment. (1977, c. 531, s. 1; 1987, c. 564, s. 28; 1989, c. 681, s. 16; 1995, c. 490, s. 12(a).)

Subsection (a) Set Out Twice — The first version of subsection (a) set out above is applicable until January 1, 1997. The second version of subsection (a) set out above is applicable January 1, 1997.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment, in the last sentence of subsection (a), substituted "General Assembly upon the recommendation of the President Pro Tempore in accordance with G.S. 120-121" for "Lieutenant Governor", added "General Assembly upon the recommendation of the" preceding "Speaker", and added "in accordance with G.S. 120-121" following "Representatives". For the applicability of this amendment, see editor's note.

§ 143-151.15. Return of certificate to Board; reissuance by Board.

A certificate issued by the Board under this Article is valid as long as the person certified is employed by the State of North Carolina or any political subdivision thereof as a Code-enforcement official. When the person certified leaves that employment for any reason, he shall return the certificate to the Board. If the person subsequently obtains employment as a Code-enforcement official in any governmental jurisdiction described above, the Board may reissue the certificate to him. The provisions of G.S. 143-151.16(b) relating to renewal fees and late renewals shall apply, if appropriate. The provisions of G.S. 143-151.16(c) shall not apply. This section does not affect the Board's powers under G.S. 143-151.17. (1977, c. 531, s. 1; 1993 (Reg. Sess., 1994), c. 678, s. 35.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 5, 1994, in the first sentence substituted "under" for "pursuant to" and substituted "is valid as" for "shall remain valid only so"; in the second sentence substituted "that employment" for "such employment"; in the third sentence substituted "may reissue" for "shall reissue"; and in the fifth sentence substituted "This section does not affect the Board's powers under" for "The provisions of this section shall not affect the Board's power to suspend or revoke any certificate pursuant to."

§ 143-151.17. Grounds for disciplinary actions; investigation; administrative procedures.

(a) The Board shall have the power to suspend, revoke or refuse to grant any certificate issued under the provisions of this Article to any person who:

(1) Has been convicted of a felony against this State or the United States, or convicted of a felony in another state that would also be a felony if it had been committed in this State;
(2) Has obtained certification through fraud, deceit, or perjury;
(3) Has knowingly aided or abetted any person practicing contrary to the provisions of this Article or the State Building Code;
(4) Has defrauded the public or attempted to do so;
(5) Has affixed his signature to a report of inspection or other instrument of service if no inspection has been made by him or under his immediate and responsible direction; or,
(6) Has been guilty of willful misconduct, gross negligence or gross incompetence.

(b) The Board may investigate the actions of any qualified Code-enforcement official or applicant upon the verified complaint in writing of any person alleging a violation of subsection (a). The Board may suspend or revoke the certification of any qualified Code-enforcement official and refuse to grant a certificate to any applicant, whom it finds to have been guilty of one or more of the actions set out in subsection (a) as grounds for disciplinary action.

(c) A denial, suspension, or revocation of a certificate issued under this Article shall be made in accordance with Chapter 150B of the General Statutes.

(d) The Board may deny an application for a certificate for any of the grounds that are described in subsection (a) of this section. Within 30 days after receipt of a notification that an application for a certificate has been denied, the applicant may make a written request for a review by a committee designated by the chairman of the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written request for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome. (1977, c. 531, s. 1; 1987, c. 827, s. 228; 1993, c. 504, s. 36; 1993 (Reg. Sess., 1994), c. 678, s. 36.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 5, 1994, in subsection (d), in the first sentence, deleted "for suspension, revocation, or refusal to grant" preceding "that are described", in the second and fourth sentences substituted "request" for "demand upon the Board," substituted "committee" for "member of the Department staff" and inserted "the chairman of," and in the third and fourth sentences substituted "applicant" for "Board."

§ 143-151.18. Violations; penalty; injunction.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 9D.

Enforcement of Building Code Insulation and Energy Utilization Standards.

§ 143-151.36. Penalty.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 9F.

North Carolina Home Inspector Licensure Board.

§ 143-151.43. Short title.

This Article is the Home Inspector Licensure Act and may be cited by that name. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 724, s. 2, made this Article effective upon ratification. The act was ratified July 11, 1994.

§ 143-151.44. Purpose.

This Article safeguards the public health, safety, and welfare and protects the public from being harmed by unqualified persons by regulating the use of the title "Licensed Home Inspector" and by providing for the licensure and regulation of those who perform home inspections for compensation. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.45. Definitions.

The following definitions apply in this Article:

(1) Associate home inspector. — An individual who is employed by a licensed home inspector to conduct a home inspection of a residential building on behalf of the licensed home inspector.

(2) Board. — The North Carolina Home Inspector Licensure Board.

(3) Compensation. — A fee or anything else of value.

(4) Home inspection. — A written evaluation of one or more of the following components of a residential building: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior and interior components, or any other related residential housing component.

(5) Home inspector. — An individual who engages in the business of performing home inspections for compensation.

(6) Residential building. — A structure intended to be, or that is in fact, used as a residence by one or more individuals. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.46. North Carolina Home Inspector Licensure Board established; members; terms; vacancies.

(a) Membership. — The North Carolina Home Inspector Licensure Board is established in the Department of Insurance. The Board shall be composed of the Commissioner of Insurance or the Commissioner's designee and seven additional members appointed as follows:

(1) A public member who is not in one of the professional categories in subdivisions (2) through (4) of this subsection, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(2) Four home inspectors, two of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and one of whom shall be appointed by the Governor.

(3) A licensed general contractor appointed by the Governor upon the recommendation of the North Carolina Home Builders Association.

(4) A licensed real estate broker appointed by the Governor upon the recommendation of the North Carolina Association of Realtors.

All members of the Board must be citizens of the State. Appointments by the General Assembly must be made in accordance with G.S. 120-121.

(b) Terms. — The members shall be appointed for staggered terms and the initial appointments shall be made prior to August 1, 1995. The appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified.

Of the members initially appointed, the home inspector appointed by the Governor shall serve a one-year term. The home inspector appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives and the licensed real estate broker shall serve two-year terms. One home inspector appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate and the licensed contractor shall serve three-year terms. The remaining home inspector appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate and the citizen of the State shall serve four-year terms.

Thereafter, as the term of each member expires, a successor shall be appointed for a term of four years.

(c) Vacancies. — Vacancies in the Board occurring for any reason shall be filled for the unexpired term by the appointing official making the original appointment. Vacancies in positions appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate or the Speaker of the House of Representatives shall be filled in accordance with G.S. 120-122. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.47. Compensation of Board members.

Members of the Board shall receive no salary for serving on the Board. Members may be reimbursed for their travel and other expenses in accordance with G.S. 93B-5 but may not receive the per diem authorized by that statute. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.48. Election of officers; meetings of Board.

(a) Officers. — Within 30 days after making appointments to the Board, the Governor shall call the first meeting of the Board. The Board shall elect a chair and a vice-chair who shall hold office according to rules adopted by the Board.

(b) Meetings. — The Board shall hold at least two regular meetings each year as provided by rules adopted by the Board. The Board may hold additional meetings upon the call of the chair or any two Board members. A majority of the Board membership constitutes a quorum. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.49. Powers and responsibilities of Board.

(a) General. — The Board has the power to do all of the following:

(1) Determine the qualifications and fitness of applicants for a new or renewed license.

(2) Adopt and publish a code of ethics and standard of practice for persons licensed under this Article.

(3) Issue, renew, deny, revoke, and suspend licenses under this Article.

(4) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.

(5) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article.

(6) Purchase or rent office space, equipment, and supplies necessary to carry out the provisions of this Article.

(7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.

(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9) Establish fees as allowed by this Article.

(10) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted by the Board.

(11) Request and receive the assistance of State educational institutions or other State agencies.
(12) Establish continuing education requirements for persons licensed under this Article.
(13) Adopt rules necessary to implement this Article.

(b) Exam. — In developing a licensing examination to determine the knowledge of an applicant, the Board must emphasize knowledge gained through experience. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.50. License required to perform home inspections for compensation or to claim to be a "licensed home inspector".

(a) Requirement. — To perform a home inspection for compensation on or after October 1, 1996, or to claim to be a licensed home inspector or a licensed associate home inspector on or after that date, an individual must be licensed by the Board. An individual who is not licensed by the Board may perform a home inspection without compensation.

(b) Form of License. — The Board may issue a license only to an individual and may not issue a license to a partnership, an association, a corporation, a firm, or another group. A licensed home inspector or licensed associate home inspector, however, may perform home inspections for or on behalf of a partnership, an association, a corporation, a firm, or another group, may conduct business as one of these entities, and may enter into and enforce contracts as one of these entities. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.51. Requirements to be licensed as a home inspector.

To be licensed as a home inspector, an applicant must do all of the following:

(1) Submit a completed application to the Board upon a form provided by the Board.
(2) Pass a licensing examination prescribed by the Board.
(3) Have minimum net assets or a bond in an amount determined by the Board. The amount may not be less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).
(4) Pay the applicable fees.
(5) Meet one of the following three conditions:
  a. Have a high school diploma or its equivalent, have been engaged as a licensed associate home inspector for at least one year, and have completed 100 home inspections for compensation.
  b. Have education and experience the Board considers to be equivalent to that required by subpart a. of this subdivision.
  c. Be licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer under Chapter 89C of the General Statutes. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.52. Requirements to be licensed as an associate home inspector.

To be licensed as an associate home inspector, a person must do all of the following:

(1) Submit a completed application to the Board upon a form provided by the Board.
(2) Pass a licensing examination prescribed by the Board.
(3) Pay the applicable fees.
(4) Have a high school diploma or its equivalent.
(5) Be affiliated or intend to be affiliated with a licensed home inspector and submit a sworn statement by the licensed home inspector with whom the applicant is or intends to be affiliated certifying that the licensed home inspector will actively supervise and train the applicant. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.53. Notification of applicant following evaluation of application.

The Board must review each application for a license submitted to it and must notify each applicant that the application is either accepted or rejected. The Board must send the notification of acceptance or rejection within 30 days of receiving the application. If the Board rejects an application, the notice sent to the applicant must state the reasons for the rejection. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.54. Miscellaneous license provisions.

A license issued by the Board is the property of the Board. If the Board suspends or revokes a license issued by it, the individual to whom it is issued must give it to the Board upon demand. An individual who is licensed by the Board must display the license certificate in the manner prescribed by the Board. A license holder whose address changes must report the change to the Board. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.55. Renewal of license; inactive licenses.

(a) Renewal. — A license expires on September 30 of each year. A license may be renewed by filing an application for renewal with the Board and paying the required renewal fee. The Board must notify license holders at least 30 days before their licenses expire. The Board must renew the license of a person who files an application for renewal, pays the required renewal fee, has fulfilled the continuing education requirements set by the Board, and is not in violation of this Article when the application is filed. If the Board imposes a continuing education requirement as a condition of renewing a license, the Board must ensure that the courses needed to fulfill the requirement are available in all geographic areas of the State.

(b) Late Renewal. — The Board may provide for the late renewal of a license upon the payment of a late fee, but no late renewal of a license may be granted more than five years after the license expires.

(c) Inactive License. — A license holder may apply to the Board to be placed on inactive status. An applicant for inactive status must follow the procedure set by the Board. A license holder who is granted inactive status is not subject to the license renewal requirements during the period the license holder remains on inactive status.

A license holder whose application is granted and is placed on inactive status may apply to the Board to be reinstated to active status at any time. The Board may set conditions for reinstatement to active status. An individual who is on inactive status and applies to be reinstated to active status must comply with the conditions set by the Board. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.56. Suspension, revocation, and refusal to renew license.

(a) The Board may deny or refuse to issue or renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the license holder or applicant for licensure has engaged in any of the following conduct:

(1) Employed fraud, deceit, or misrepresentation in obtaining or attempting to obtain or renew a license.
(2) Committed an act of malpractice, gross negligence, or incompetence in the practice of home inspections.
(3) Without having a current license, either performed home inspections for compensation or claimed to be licensed.
(4) Engaged in conduct that could result in harm or injury to the public.
(5) Been convicted of or pled guilty or nolo contendere to any crime involving moral turpitude.
(6) Been adjudicated insane or incompetent and has not presented proof of recovery from the condition.
(7) Engaged in any act or practice that violates any of the provisions of this Article or any rule issued by the Board, or aided, abetted, or assisted any person in a violation.

(b) A denial of licensure, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license holder may be ordered by the Board after a hearing held in accordance with Chapter 150B of the General Statutes and rules adopted by the Board. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.57. Fees.

(a) Maximum Fees. — The Board may adopt fees that do not exceed the amounts set in the following table for administering this Article:

Item	*Maximum Fee*
Application for home inspector license	$25.00
Application for associate home inspector license	15.00
Home inspector examination	75.00
Issuance of home inspector license	150.00
Issuance of associate home inspector license	100.00
Late renewal of home inspector license	25.00

Late renewal of associate home inspector license inspector	15.00
Copies of Board rules or licensure standards	Cost of printing and mailing.

(b) Subsequent Application. — An individual who applied for a license as a home inspector and who failed the home inspector examination is not required to pay an additional application fee if the individual submits another application for a license as a home inspector. The individual must pay the examination fee, however, to be eligible to take the examination again. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.58. Duties of licensed home inspector or licensed associate home inspector.

A licensed home inspector or licensed associate home inspector must give to each person for whom the inspector performs a home inspection for compensation a written report of the home inspection. The inspector must give the person the report by the date set in a written agreement by the parties to the home inspection. If the parties to the home inspection did not agree on a date in a written agreement, the inspector must give the person the report within three business days after the inspection was performed. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.59. Violation is a misdemeanor.

A person who violates a provision of this Article is guilty of a Class 2 misdemeanor. Each unlawful act or practice constitutes a distinct and separate offense. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.60. Injunctions.

The Board may make application to any appropriate court for an order enjoining violations of this Article. Upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction or a restraining order or take other appropriate action. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.61. Certain applicants do not have to be licensed as an associate home inspector before being eligible for licensure as a home inspector.

The requirement that an applicant for licensure as a home inspector first have a license as an associate home inspector does not apply to a person who, prior to October 1, 1996, had been engaged in the business of performing home inspections for compensation for at least one year and had conducted at least 100 home inspections for compensation. All other requirements for licensure as a home inspector, including passing a licensing examination provided by the Board, apply to an applicant who is exempted by this section from the requirement of prior licensure as an associate home inspector. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.62. Persons and practices not affected.

This Article does not apply to any of the following:

(1) A person who is employed as a code enforcement official by the State or a political subdivision of the State and is certified pursuant to Article 9C of Chapter 143 of the General Statutes, when acting within the scope of that employment.

(2) A plumbing or heating contractor who does not claim to be a home inspector and is licensed under Article 2 of Chapter 87 of the General Statutes, when acting pursuant to that Article.

(3) An electrical contractor who does not claim to be a home inspector and is licensed under Article 4 of Chapter 87 of the General Statutes, when acting pursuant to that Article.

(4) A real estate broker or a real estate sales representative who does not claim to be a home inspector and is licensed under Article 1 of Chapter 93A of the General Statutes, when acting pursuant to that Article.

(5) A structural pest control licensee licensed under the provisions of Article 4C of Chapter 106 of the General Statutes, an employee of the licensee, or a certified applicator licensed under the provisions of Article 4C of Chapter 106 of the General Statutes who does not claim to be a home inspector, while performing structural pest control activities pursuant to that Article. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.63. Administration.

(a) The Division of Engineering and Building Code in the Department of Insurance shall provide clerical and other staff services required by the Board, and shall administer and enforce all provisions of this Article and all rules adopted under this Article, subject to the direction of the Board. The Board shall reimburse the Division for its services to the Board.

(b) Any monies received by the Board pursuant to this Article shall be deposited in the State treasury to the account of the Board and shall be used to administer this Article.

(c) The books and records of the Board are subject to the oversight of the State Auditor, as provided in G.S. 93B-4. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

ARTICLE 10.

Various Powers and Regulations.

§ 143-152. Injury to water supply misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-153. Keeping swine near State institutions; penalty.

On the petition of a majority of the legal voters living within a radius of one quarter of a mile of the administrative building of any State educational or charitable institution, it shall be unlawful for any person to keep swine or swine pens within such radius of one quarter of a mile. Any person violating this section shall be guilty of a Class 3 misdemeanor and shall be subject to only a fine of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00). (1909, c. 706; C.S., s. 7527; 1993, c. 539, s. 1015; 1994, Ex. Sess., c. 14, s. 62; c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment, by c. 14, s. 62, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "be subject to only a fine" for "only be subject to a fine" in the last sentence.

ARTICLE 12A.

Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act.

§ 143-166.5. Other benefits not affected.

CASE NOTES

Cited in Kestler v. Board of Trustees, 48 F.3d 800 (4th Cir. 1995).

ARTICLE 12C.

Retirement Benefits for State Law-Enforcement Officers.

§ 143-166.30. Retirement benefits for State law-enforcement officers.

(a) Definitions. — The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Beneficiary" means any person in receipt of a retirement allowance or other benefit from a Retirement System.

(2) "Creditable service" means membership service plus prior service plus military service allowable with a Retirement System.

(3) "Employer" means the State of North Carolina and its departments, agencies and institutions.

(4) "Law-enforcement officer" means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State.

(5) "Member" means an officer included in the membership of a retirement system including former officers no longer employed who also elected to leave their accumulated contributions on deposit with a Retirement System.

(6) "Officer" means a "law-enforcement officer".

(7) "Participant" means an officer with an individual account with the Supplemental Retirement Income Plan.

(8) "Regular accumulated contributions" means the sum of all contributions of a member made to the Retirement System, together with regular interest thereon, pursuant to G.S. 143-166 as the same appeared prior to January 1, 1985.

(9) "Retirement allowance" means annual payments for life payable in monthly installments continuing until the death of a beneficiary.

(10) "Law-Enforcement Officers' Retirement System" means the system provided for under G.S. 143-166.

(11) "Special annuity account accumulated contributions" means the sum of all contributions of a member or an employer made to the Special Annuity Accounts for Members of the Law-Enforcement Officers' Retirement System, together with regular interest thereon, pursuant to G.S. 143-166.03 as the same appeared prior to January 1, 1985.

(12) "Special Annuity Accounts" means the supplemental defined contribution provisions of the Law-Enforcement Officers' Retirement System, provided for under G.S. 143-166.03 as the same appeared prior to January 1, 1985.

(13) "State" means the State of North Carolina.

(14) "State Retirement System" means the Teachers' and State Employees' Retirement System of North Carolina provided for under Article 1 of Chapter 135 of the General Statutes.

(15) "Supplemental Retirement Income Plan" means a plan created in conformance with Section 401(a), 401(k), or any other section of the Internal Revenue Code of 1954 as amended.

(b) Basic Retirement System. — On and after January 1, 1985, law-enforcement officers employed by the State shall be members of the Teachers' and State Employees' Retirement System and beneficiaries who were last employed as officers by the State, or who are surviving beneficiaries of officers last employed by the State, shall be beneficiaries of the State Retirement System and paid in benefit amounts then in effect. All members of the Law-Enforcement Officers' Retirement System last employed and paid by the State shall be members of the State Retirement System.

(c) Transfers of Assets and Liabilities to Other Retirement Systems. — As of January 1, 1985, certain assets and liabilities of the

Law-Enforcement Officers' Retirement System shall be transferred to the Teachers' and State Employees' Retirement System and the Supplemental Retirement Income Plan in the amounts calculated and in the order of precedence enumerated as follows:

(1) The regular accumulated contributions of members of the Law-Enforcement Officers' Retirement System employed by the State or last employed by the State shall be transferred from the annuity savings fund of the Law-Enforcement Officers' Retirement System to the annuity savings fund of the State Retirement System to the credit of each individual officer.

(2) An amount equal to the present value of the liabilities on account of the retirement allowances payable to beneficiaries last employed as officers by the State and the surviving beneficiaries of officers last employed by the State, as calculated by the Retirement System's consulting actuary, shall be transferred from the pension accumulation fund of the Law-Enforcement Officers' Retirement System to the pension accumulation fund of the State Retirement System.

(3) After the transfers provided for above, additional assets in the pension accumulation fund of the Law-Enforcement Officers' Retirement System shall be transferred to the pension accumulation fund of the State Retirement System, in an amount equal to the ratio of the accrued liabilities on account of members of the Law-Enforcement Officers' Retirement System employed by the State or last employed by the State to the total accrued liabilities on account of all members of the Law-Enforcement Officers' Retirement System.

(4) The special annuity account accumulated contributions shall be transferred from the special annuity savings fund of the Law-Enforcement Officers' Retirement System to the Supplemental Retirement Income Plan pursuant to subsection (d) of this section to the credit of individual officers.

(d) Supplemental Retirement Income Plan for State Law-Enforcement Officers. — As of January 1, 1985, there shall be created a Supplemental Retirement Income Plan, hereinafter called the "Plan", established for the benefit of all law-enforcement officers employed by the State, who shall be participants. The Board of Trustees of the State Retirement System shall administer the Plan and shall, under the terms and conditions otherwise appearing herein, provide Plan benefits either (i) by establishing a separate trust fund in conformance with Section 401(a), Section 401(k) or other sections of the Internal Revenue Code of 1954 as amended or, (ii) by causing the Plan to affiliate with some master trust fund providing the same benefits for participants. The Plan shall be separate and apart from any retirement systems.

In addition to the contributions transferred from the Law-Enforcement Officers' Retirement System and the contributions otherwise provided for in this Article, participants may make voluntary contributions to the Plan to be credited to the designated individual accounts of participants; provided, in no instance shall the total contributions by a participant exceed ten percent (10%) of a participant's compensation within any calendar year.

All contributions to the Plan shall be credited to the individual accounts of participants, and shall be fully and immediately vested in the name of the participant, and shall be invested according to each participant's election, as provided by the Board of Trustees, including but not limited to time deposits, and both fixed and variable investments. The Plan may provide for loans to participants, at reasonable rates of interest to be charged, from participants' individual accounts, and may provide for withdrawal of contributions on account of hardship.

The benefit to a participant in the Plan shall be either a lump-sum distribution or a distribution in periodic installments of the participant's account payable under retirement, disability, or termination of employment. Upon the death of a participant there shall be paid the same lump-sum distribution or periodic installments to the surviving spouse of the participant or otherwise to the participant's estate; provided, should a participant instruct the Board of Trustees in writing that he does not wish these benefits to be paid to his spouse or estate, then the benefits shall be paid to the person or persons as the participant may name for this purpose.

(e) State Contributions to the Supplemental Retirement Income Plan. — Under all other restrictions as are herein provided, the State shall contribute monthly to the individual accounts of participants who are employed by the State an amount equal to five percent (5%) of the compensation of each participant. The contributions so paid shall be in addition to the contributions on account of court cost assessments as hereinafter provided.

Contributions shall be made to the individual accounts of all participants in the Plan on a per capita basis in equal shares, equal to the sum of the one-half dollar ($0.50) for each cost of court assessed and collected under G.S. 7A-304.

(e1) Rights of Participants under the Uniformed Services Employment and Reemployment Rights Act. — A participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, hereafter referred to as "USERRA", shall be entitled to all rights and benefits that the participant would have been entitled to under this section had the participant's employment not been interrupted, provided that the participant returns to service as a law enforcement officer while the participant's reemployment rights are protected under the provisions of USERRA.

(f) Administration. — The provisions of the State Retirement System pertaining to administration and management of funds under G.S. 135-6 and 7 are made applicable to the Plan.

(g) Exemption from Garnishment and Attachment. — The right of a participant in the Supplemental Retirement Income Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and garnishment.

(h) Notwithstanding any other provisions of law, any pending or inchoate rights of a member of the Law-Enforcement Officers' Retirement System as of their transfer to the State Retirement System on January 1, 1985, including the rights to a vested deferred retirement allowance and to commence retirement at certain ages with required years of service as a law-enforcement officer, shall in no way be diminished; provided, however, in no event may a member commence retirement and continue membership service with the same Retirement System. (1983 (Reg. Sess., 1984), c. 1034, s. 248; 1985, c. 479, s. 196(s); 1989, c. 792, s. 2.7; 1995, c. 361, s. 5.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, added subsection (e1).

ARTICLE 12D.

Separation Allowances for Law-Enforcement Officers.

§ 143-166.41. Special separation allowance.

CASE NOTES

Amount of Separation Allowance Mandatory. — This statute permits local governments to determine eligibility and requires them to make payments, but it does not authorize local governments to determine the amount of the separation allowance differently from the mandate of subsection (a). Bowers v. City of High Point, 339 N.C. 413, 451 S.E.2d 284 (1994).

"Base rate of compensation" refers to that portion of compensation which is relatively stable and forms the foundation or groundwork of the employee's entire compensation scheme; this would generally be the minimum amount of compensation to which the employee is entitled in any given pay period relatively independent of factors other than the employment relationship itself. Bowers v. City of High Point, 339 N.C. 413, 451 S.E.2d 284 (1994).

In this section "base rate of compensation" has a definite meaning not subject to alteration by local governments and does not include overtime pay, longevity pay, or pay for unused accrued vacation. Bowers v. City of High Point, 339 N.C. 413, 451 S.E.2d 284 (1994).

Authority of Municipalities. — This section and § 143-166.42 do not authorize municipalities to make separation allowances based on overtime pay, longevity pay, and accrued vacation. Bowers v. City of High Point, 339 N.C. 413, 451 S.E.2d 284 (1994).

Cited in Bowers v. City of High Point, 110 N.C. App. 862, 431 S.E.2d 219 (1993).

§ 143-166.42: Special separation allowances for local officers.

CASE NOTES

Authority of Municipalities. — Section 143-166.41 and this section do not authorize municipalities to make separation allowances based on overtime pay, longevity pay, and accrued vacation. Bowers v. City of High Point, 339 N.C. 413, 451 S.E.2d 284 (1994).

ARTICLE 12E.

Retirement Benefits for Local Governmental Law-Enforcement Officers.

§ 143-166.50. Retirement benefits for local governmental law-enforcement officers.

(a) Definitions. — The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, have the following meaning:

(1) "Beneficiary" means any person in receipt of a retirement allowance or other benefit from a Retirement System.

(2) "Employer" means a county, city, town or other political subdivision of the State.

(3) "Law-enforcement officer" means a full-time paid employee of an employer, who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State.

(4) "Law-Enforcement Officers' Retirement System" means the system provided for under Article 12 of Chapter 143 of the General Statutes, as it existed prior to January 1, 1986.

(5) "Local Governmental Employees' Retirement System" means the Local Governmental Employees' Retirement System of North Carolina provided for under Article 3 of Chapter 128 of the General Statutes.

(6) "Member" means an officer included in the membership of a retirement system, including former officers no longer employed who also elected to leave their accumulated contributions on deposit with a Retirement System.

(7) "Officer" means a "law-enforcement officer."

(8) "State" means the State of North Carolina.

(b) Basic Retirement System. — On and after January 1, 1986, law-enforcement officers employed by an employer shall be members of the Local Government Employees' Retirement System, and beneficiaries who were last employed as officers by an employer, or who are surviving beneficiaries of officers last employed by an employer, are beneficiaries of the Local Governmental Employees' Retirement System and paid in benefit amounts then in effect. All members of the Law-Enforcement Officers' Retirement System last employed and paid by an employer are members of the Local Retirement System.

(c) Rights. — Notwithstanding any other provisions of law, any accrued or inchoate rights of a member of the Law-Enforcement Officers' Retirement System as of his transfer to the Local Governmental Employees' Retirement System on January 1, 1986, including the rights to a vested deferred retirement allowance and to commence retirement at certain ages with required years of service as a law-enforcement officer, may in no way be diminished; provided, however, in no event may a member commence retirement and continue membership service with the same Retirement System after January 1, 1986.

(d) Court Cost Receipts. — Of the sum derived from the cost of court provided for in G.S. 7A-304(a)(3), the amount designated for this Article, except for the amount designated for the provisions of G.S. 143-166.50(e), shall be paid over to the pension accumulation fund of the Local Governmental Employees' Retirement System and shall offset, to the extent of these receipts, the employers' normal contribution rate required in G.S. 128-30(d)(2) as it pertains to law enforcement officers.

(e) Supplemental Retirement Income Plan for Local Governmental Law-Enforcement Officers. — As of January 1, 1986, all law-enforcement officers employed by a local government employer, are participating members of the Supplemental Retirement Income Plan as provided by Article 5 of Chapter 135 of the General Statutes. In addition to the contributions transferred from the Law-Enforcement Officers' Retirement System, participants may make voluntary contributions to the Supplemental Retirement Income Plan to be credited to the designated individual accounts of participants; provided, in no instance shall the total contributions by a participant exceed ten percent (10%) of a participant's compensation within any calendar year. From July 1, 1987, until July 1, 1988, local government employers of law enforcement officers shall contribute an amount equal to at least two percent (2%) of participating local officers' monthly compensation to the Supplemental Retirement Income Plan to be credited to the designated individual accounts of participating local officers; and on and after July 1, 1988, local government employers of law enforcement officers shall contribute an amount equal to five percent (5%) of participating local officers' monthly compensation to the Supplemental Retirement Income Plan to be credited to the designated individual accounts of participating local officers.

Additional contributions shall also be made to the individual accounts of all participants in the Plan, except for Sheriffs, on a per capita equal-share basis from the sum of one dollar and twenty-five cents ($1.25) for each cost of court collected under G.S. 7A-304.

(e1) Rights of Participants under the Uniformed Services Employment and Reemployment Rights Act. — A participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, hereafter referred to as "USERRA", shall be entitled to all rights and benefits that the participant would have been entitled to under this section had the participant's employment not been interrupted, provided that the participant returns to service as a law enforcement officer while the participant's reemployment rights are protected under the provisions of USERRA. (1985, c. 479, s. 196(t); c. 729, ss. 6, 7; 1985 (Reg. Sess., 1986), c. 1015, s. 2; c. 1019, s. 1; 1995, c. 361, s. 6.)

Local Modification. — Catawba: 1995, c. 306, s. 1; Mecklenburg: 1995, c. 532, s. 1.

For additional local modifications to this section, see the main pamphlet.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, added subsection (e1).

ARTICLE 13.

Publications.

§ 143-170.1. Statement of cost of public documents; chief administrator charged with compliance.

(a) Every agency of this State publishing a public document, other than one published for the principal purpose of sale to the public, shall cause the following statement to be printed adjacent to the identification of the agency responsible for the publication:

"(Number of copies) copies of this public document were printed at a cost of $......, or $...... per copy."

For the purposes of this Article the term "cost" shall include printing costs in the form of labor and materials, and other identifiable design, typesetting, and binding costs.

(a1) Any public document without a statement of cost shall not be mailed or distributed at public expense.

(a2) Whenever a public document that is published by an agency of this State is printed on recycled paper, the document shall contain a printed statement or symbol indicating that the document was printed on recycled paper.

(a3) If an agency fails to comply with this section, then the agency's printing budget for the fiscal year following the violation shall be reduced by ten percent (10%).

(b) The chief administrator of the agency authorizing the printing is charged with agency compliance with the provisions of this Article. (1983, c. 866, ss. 6, 7; 1989, c. 34; 1993, c. 256, s. 4; 1995, c. 324, s. 6.10.)

Editor's Note. — Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added subsection (a3).

ARTICLE 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

§ 143-211. Declaration of public policy.

Legal Periodicals. —

For comment, "Legal Analysis of the Constitutionality of the Water Supply Watershed Protection Act of 1989 and the Hyde Bill," see 29 Wake Forest L. Rev. 1279 (1994).

CASE NOTES

Evidence of Injury Sufficient to Be "Person Aggrieved." — Where person alleged sufficient injury in fact to interests within the zone of those to be protected and regulated by the statute, and rules and standards promulgated pursuant thereto, he was, therefore, a "person aggrieved" within the meaning and intent of the Air Pollution Control Act. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 337 N.C. 569, 447 S.E.2d 768 (1994), rehearing denied, 338 N.C. 1, 447 S.E.2d 768.

Common-Law Actions of Nuisance and Continuing Trespass Not Preempted. —

The very complex and comprehensive set of regulatory requirements and controls established under the pertinent provisions of Chapter 143 of the General Statutes are clearly distinguishable from the parameters of a private nuisance as that term was understood under common law. State ex rel. Cobey v. Ballard, 110 N.C. App. 486, 429 S.E.2d 735 (1993).

The case at bar should have been characterized as an action in nuisance, thus qualifying it as a cause of action which existed at the adoption of our State's 1868 Constitution and satisfying the first prong of the test in State ex rel. Rhodes v. Simpson, 325 N.C. 514, 385 S.E.2d 329 (1989). State ex rel. Cobey v. Ballard, 110 N.C. App. 486, 429 S.E.2d 735 (1993).

§ 143-214.1. Water; water quality standards and classifications; duties of Commission.

Legal Periodicals. —

For comment, "Legal Analysis of the Constitutionality of the Water Supply Watershed Protection Act of 1989 and the Hyde Bill," see 29 Wake Forest L. Rev. 1279 (1994).

§ 143-214.2A. Prohibited disposal of medical waste.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Legal Periodicals. — For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

§ 143-214.4. Certain cleaning agents containing phosphorus prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-214.5. Water supply watershed protection.

Editor's Note. —

Session Laws 1995, c. 301, provides that, since certain water supply watersheds meet the standards of more than one classification under the water supply watershed protection program, the Environmental Management Commission shall reexamine, under G.S. 143-214.5, the classification of any water supply watershed that was classified as a WS-III water supply watershed on March 1, 1995, and that meets certain other criteria; that reclassification of any such watershed shall reduce the land area affected; that any watershed that is reclassified as a WS-IV watershed shall not thereafter be reclassified to a more restrictive classification; and that if the Commission fails to reexamine the classification of and watershed that meets the criteria of this section by October 1, 1995, that watershed shall automatically be reclassified as WS-IV watershed on that date.

Legal Periodicals. — For comment, "Legal Analysis of the Constitutionality of the Water Supply Watershed Protection Act of 1989 and the Hyde Bill," see 29 Wake Forest L. Rev. 1279 (1994).

§ 143-214.7. Stormwater runoff rules and programs.

(a) Policy, Purpose and Intent. — The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing and enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(b) The Commission shall be authorized and directed to implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

(1) Classified shellfish waters;
(2) Water supply watersheds;
(3) Outstanding resource waters;
(4) High quality waters; and
(5) Other waters where the Commission finds control of stormwater is needed to meet the purposes of this Article. Provided however, that prior to implementation of rules under this subdivision (5), the Commission shall consult with the Environmental Review Commission.

(c) Chapter 150B of the General Statutes governs adoption of rules by the Commission. (1989, c. 447, s. 2; 1995, c. 507, s. 27.8(q).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1995, c. 507, which amended this section, in s. 27.8(z) provides that the amendment is effective December 1, 1995, and is applicable to all rules for which a notice of rule making is published in the North Carolina Register on or after that date and to rule and Building Code changes that are initiated on or after that date and that are not subject to the rule-making procedures set out in Article 2A of Chapter 150B of the General Statutes.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provision of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 fiscal biennium."

Effect of Amendments. — The 1995 amendment, effective December 1, 1995, rewrote subsection (c).

§ 143-215. Effluent standards or limitations.

(a) The Commission is authorized and directed to develop, adopt, modify and revoke effluent standards or limitations and waste treatment management practices as it determines necessary to prohibit, abate, or control water pollution. The effluent standards or limitations and management practices may provide, without limitation, standards or limitations or management practices for any point source or sources; standards, limitations, management practices, or prohibitions for toxic wastes or combinations of toxic wastes discharged from any point source or sources; and pretreatment standards for wastes discharged to any disposal system subject to effluent standards or limitations or management practices.

(b) The effluent standards or limitations developed and adopted by the Commission shall provide limitations upon the effluents discharged from pretreatment facilities and from outlets and point sources to the waters of the State adequate to limit the waste loads upon the waters of the State to the extent necessary to maintain or enhance the chemical, physical, biological and radiological integrity of the waters. The management practices developed and adopted by the Commission shall prescribe practices necessary to be employed in order to prevent or reduce contribution of pollutants to the State's waters.

(c), (d). Repealed by Session Laws 1995, c. 507, s. 27, effective December 1, 1995.

(e) Except as required by federal law or regulations, the Commission may not adopt effluent standards or limitations applicable to animal and poultry feeding operations. Notwithstanding the foregoing, where manmade pipes, ditches, or other conveyances have been constructed for the purpose of willfully discharging pollutants to the waters of the State, the Secretary shall have the authority to assess fines and penalties not to exceed five thousand dollars ($5,000) for the first offense. The definitions and provisions of 40 Code of Federal Regulations § 122.23 (July 1, 1990 Edition) shall apply to this subsection. (1967, c. 892, s. 1; 1971, c. 1167, s. 5; 1973, c. 821, s. 4; c. 929; c. 1262, s. 23; 1975, c. 583, s. 1; 1979, c. 633, ss. 2-4; 1987, c. 827, ss. 154, 158; 1989, c. 168, s. 48; 1991, c. 403, s. 2; 1991 (Reg. Sess., 1992), c. 890, s. 15; 1995, c. 507, s. 27.8(s).)

Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1995, c. 507, which amended this section, in s. 27.8(z) provides that the amendment is effective December 1, 1995, and is applicable to all rules for which a notice of rule making is published in the North Carolina Register on or after that date and to rule and Building Code changes that are initiated on or after that date and that are not subject to the rule-making procedures set out in Article 2A of Chapter 150B of the General Statutes.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provision of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 fiscal biennium."

Effect of Amendments. — The 1995 amendment, effective December 1, 1995, repealed subsections (c) and (d).

Legal Periodicals. —

For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

§ 143-215.1. Control of sources of water pollution; permits required.

CASE NOTES

Testimony of Director of Division of Environmental Management concerning harm to the regulatory process and community was competent evidence to support the findings of the N.C. Environmental Management Commission imposing civil penalty for violations of subdivision (a)(2) of this section. Chesapeake Microfilm, Inc. v. North Carolina Dep't of Env't., Health & Natural Resources, 111 N.C. App. 737, 434 S.E.2d 218 (1993), appeal dismissed, cert. denied, 335 N.C. 768, 442 S.E.2d 511, aff'd per curiam, 337 N.C. 797, 448 S.E.2d 514 (1994).

§ 143-215.3. General powers of Commission and Department; auxiliary powers.

(a) Additional Powers. — In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

(1) To make rules implementing Articles 21, 21A, 21B, or 38 of this Chapter.

(1a) To charge fees for the following:

a. Processing of applications for permits or registrations issued under Articles 21, 21A, 21B, and 38 of this Chapter;

b. Administering permits or registrations issued under Articles 21, 21A, 21B, or 38 of this Chapter including monitoring compliance with the terms of those permits; and

c. Reviewing, processing, and publicizing applications for construction grant awards under the Federal Water Pollution Control Act.

No fee may be charged under this provision, however, to a farmer who submits an application that pertains to his farming operations.

(1b) The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.1 of Article 21 may not exceed four hundred dollars ($400.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed five hundred dollars ($500.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing a registration under Part 2A of this Article or Article 38 of this Chapter may not exceed fifty dollars ($50.00) for any single registration. An additional fee of twenty percent (20%) of the registration processing fee may be assessed for a late registration under Article 38 of this Chapter. The fee for administering and compliance monitoring under G.S. 143-215.1 of Article 21 and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B shall be charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars ($1,500) per year. Fees for processing all permits under Article 21A and all other sections of Articles 21 and 21B shall not exceed one hundred dollars ($100.00) for any single permit. Notwithstanding any other provision of this subdivision, the total payment for fees required for all permits under this subsection for any single facility shall not exceed seven thousand five hundred dollars ($7,500) per year, which amount shall include all application fees and fees for administration and compliance monitoring. A single facility is defined to be any contiguous area under one ownership and in which permitted activities occur. For all permits issued under these Articles where a fee schedule is not specified in the statutes, the Commission, or other commission specified by statute shall adopt a fee schedule in a rule following the procedures established by the Administrative Procedure Act. Fee schedules shall be established to reflect the size of the emission or discharge, the potential impact on the environment, the staff costs involved, relative costs of the issuance of new permits and the reissuance of existing permits, and shall include adequate safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant. A system shall be considered to allow consolidated annual payments for persons with multiple permits. In its rulemaking to establish fee schedules, the Commission is also directed to consider a method of rewarding facilities which achieve full compliance with administrative and self-monitoring reporting requirements, and to consider, in those cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for the renewal or amendment.

(1c) Moneys collected pursuant to G.S. 143-215.3(a)(1a) shall be used to:

a. Eliminate, insofar as possible, backlogs of permit applications awaiting agency action;

b. Improve the quality of permits issued;

c. Improve the rate of compliance of permitted activities with environmental standards; and

d. Decrease the length of the processing period for permit applications.

(1d) The Commission may adopt and implement a graduated fee schedule sufficient to cover all direct and indirect costs required for the State to develop and administer a permit program which meets the requirements of Title V. The provisions of subdivision (1b) of this subsection do not apply to the adoption of a fee schedule under this subdivision. In adopting and implementing a fee schedule, the Commission shall require that the owner or operator of all air contaminant sources subject to the requirement to obtain a permit under Title V to pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V. The fee schedule shall be adopted according to the procedures set out in Chapter 150B of the General Statutes.

a. The total amount of fees collected under the fee schedule adopted pursuant to this subdivision shall conform to the requirements of section 502(b)(3)(B) of Title V. No fee shall be collected for more than 4,000 tons per year of any individual regulated pollutant, as defined in section 502(b)(3)(B)(ii) of Title V, emitted by any source. Fees collected pursuant to this subdivision shall be credited to the Title V Account.

b. The Commission may reduce any permit fee required under this section to take into account the financial resources of small business stationary sources as defined under Title V and regulations promulgated by the United States Environmental Protection Agency.

c. When funds in the Title V Account exceed the total amount necessary to cover the cost of the Title V program for the next fiscal year, the Secretary shall reduce the amount billed for the next fiscal year so that the excess funds are used to supplement the cost of administering the Title V permit program in that fiscal year.

(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21A or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste, or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions, or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system, or treatment works. In the case of effluent or emission data, any records, reports, or information obtained under this Article or Article 21A or Article 21B of this Chapter shall be related to any applicable effluent or emission limitations or toxic, pretreatment, or new source performance standards. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article or by Article 21B of this Chapter.

(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department; provided, that the provisions of any such delegation of power shall be set forth in the rules of the Commission; and provided further that the Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission.

(5) To institute such actions in the superior court of any county in which a violation of this Article, Article 21B of this Chapter, or the rules of the Commission has occurred, or, in the discretion of the Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Commission may deem necessary for the enforcement of any of the provisions of this Article, Article 21B of this Chapter, or of any official

action of the Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Commission.

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached within a reasonable time, the Commission shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be prima facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department to collect, handle or weigh numerous specimens of dead fish or wildlife.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Commission on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery, less the cost of investigation, shall be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Commission, after public hearing, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article or Article 21B of this Chapter. The Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Commission that the generalized condition of water or air pollution has ceased.

Notice of hearing shall be given in accordance with the provisions of G.S. 150B-21.2.

A person aggrieved by an order of the Commission under this subdivision may seek judicial review of the order under Article 4 of Chapter 150B of the General Statutes without first commencing a contested case. An order may not be stayed while it is being reviewed.

(9) If an investigation conducted pursuant to this Article or Article 21B of this Chapter reveals a violation of any rules, standards, or limitations adopted by the Commission pursuant to this Article or Article 21B of this Chapter, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or G.S. 143-215.110, the Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums

assessed, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.

(10) To require a laboratory facility that performs any tests, analyses, measurements, or monitoring required under this Article or Article 21B of this Chapter to be certified annually by the Department, to establish standards that a laboratory facility and its employees must meet and maintain in order for the laboratory facility to be certified, and to charge a laboratory facility a fee for certification. Fees collected under this subdivision shall be credited to the Water and Air Account and used to administer this subdivision. These fees shall be applied to the cost of certifying commercial, industrial, and municipal laboratory facilities.

(11) Repealed by Session Laws 1983, c. 296, s. 6.

(12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Commission shall fix a place and time for a hearing before the Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Commission shall either affirm, modify or set aside the order.

In the absence of a generalized condition of air or water pollution of the type referred to above, if the Secretary finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article or Article 21B of this Chapter. In such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this subdivision shall apply.

(13) Repealed by Session Laws 1983, c. 296, s. 6.

(14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of

pollutants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.

(15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.

(17) To adopt rules to implement Part 2A of Article 21A of Chapter 143.

(b) Research Functions. — The Department shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for air pollution and waste disposal problems. To this end, the Department may cooperate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina educational institution, with the consent of such institution. In addition, the Department shall have the power to cooperate and enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its functions under this Article or Article 21B of this Chapter. All State departments shall advise with and cooperate with the Department on matters of mutual interest.

(c) Relation with the Federal Government. — The Commission as official water and air pollution control agency for the State is delegated to act in local administration of all matters covered by any existing federal statutes and future legislation by Congress relating to water and air quality control. In order for the State of North Carolina to effectively participate in programs administered by federal agencies for the regulation and abatement of water and air pollution, the Department is authorized to accept and administer funds provided by federal agencies for water and air pollution programs and to enter into contracts with federal agencies regarding the use of such funds.

(d) Relations with Other States. — The Commission or the Department may, with the approval of the Governor, consult with qualified representatives of adjoining states relative to the establishment of regulations for the protection of waters and air of mutual interest, but the approval of the General Assembly shall be required to make any regulations binding.

(e) Variances. — Any person subject to the provisions of G.S. 143-215.1 or 143-215.108 may apply to the Commission for a variance from rules, standards, or limitations established pursuant to G.S. 143-214.1, 143-215, or 143-215.107. The Commission may grant such variance, for fixed or indefinite periods after public hearing on due notice, or where it is found that circumstances so require, for a period not to exceed 90 days without prior hearing and notice. Prior to granting a variance hereunder, the Commission shall find that:

(1) The discharge of waste or the emission of air contaminants occurring or proposed to occur do not endanger human health or safety; and

(2) Compliance with the rules, standards, or limitations from which variance is sought cannot be achieved by application of best available technology found to be economically reasonable at the time of application for such variances, and would produce serious hardship without equal or greater benefits to the public, provided that such variances shall be consistent with the provisions of the Federal Water Pollution Control Act as amended or the Clean Air Act as amended; and provided further, that any person who would otherwise be entitled to a variance or modification under the Federal Water Pollution Control Act as amended or the Clean Air Act as amended shall also be entitled to the same variance from or modification in rules, standards, or limitations established pursuant to G.S. 143-214.1, 143-215, and 143-215.107, respectively. (1951, c. 606; 1957, c. 1267, s. 3; 1959, c. 779, s. 8; 1963, c. 1086; 1967, c. 892, s. 1; 1969, c. 538; 1971, c. 1167, ss. 7, 8; 1973, c. 698, ss. 1-7, 9, 17; c. 712, s. 1; c. 1262, ss. 23, 86; c. 1331, s. 3; 1975, c. 583, ss. 5, 6; c. 655, s. 3; 1977, c. 771, s. 4; 1979, c. 633, ss. 6-8; 1979, 2nd Sess., c. 1158, ss. 1, 3, 4; 1983, c. 296, ss. 5-8; 1985, c. 551, s. 2; 1987, c. 111, s. 2; c. 767, s. 1; c. 827, ss. 1, 154, 161, 266; 1987 (Reg. Sess., 1988), c. 1035, s. 2; 1989, c. 500, s. 122; c. 652, s. 1; 1991, c. 552, ss. 2, 11; c. 712, s. 2; 1991 (Reg. Sess., 1992), c. 890, s. 16; c. 1039, ss. 14, 20.1; 1993, c. 344, s. 2; c. 400, ss. 1(c), 2, 3, 15; c. 496, s. 4; 1993 (Reg. Sess., 1994), c. 694, s. 1; 1995, c. 484, s. 5.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 6, 1994, rewrote subdivision (a)(2).

The 1995 amendment, effective January 1, 1996, and applicable to an application for a new permit, a modification of an existing permit, or a reissuance or renewal of an existing permit filed on or after that date, in subdivision (a)(1b) deleted "and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter" preceding "may not exceed" in the first sentence, added the second sentence, and made stylistic changes.

§ 143-215.3A. Water and Air Quality Account; use of application and permit fees; Title V Account; I & M Air Pollution Control Account; reports.

(a) The Water and Air Quality Account is established as a nonreverting account within the Department. Revenue in the Account shall be applied to the costs of administering the programs for which the fees were collected. Revenue credited to the Account pursuant to G.S. 105-449.125, 105-449.134, and 105-449.43 shall be used to administer the air quality program. Except for the following fees, all application fees and permit administration fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this Chapter shall be credited to the Account:

(1) Fees collected under Part 2 of Article 21A and credited to the Oil or Other Hazardous Substances Pollution Protection Fund.
(2) Fees credited to the Title V Account.
(3) Fees credited to the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund under G.S. 143-215.3B.
(4) Fees collected under G.S. 143-215.28A.

(b) The Title V Account is established as a nonreverting account within the Department. Revenue in the Account shall be used for developing and implementing a permit program that meets the requirements of Title V. The Title V Account shall consist of fees collected pursuant to G.S. 143-215.3(a)(1d) and G.S. 143-215.106A. Fees collected under G.S. 143-215.3(a)(1d) shall be used only to cover the direct and indirect costs required to develop and administer the Title V permit program, and fees collected under G.S. 143-215.106A shall be used only for the eligible expenses of the Title V program. Expenses of the Air Quality Compliance Advisory Panel, the ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, support staff, equipment, legal services provided by the Attorney General, and contracts with consultants and program expenses listed in section 502(b)(3)(A) of Title V shall be included among Title V program expenses.

(b1) The I & M Air Pollution Control Account is established as a nonreverting account within the Department. Fees transferred to the Division of Environmental Management of the Department pursuant to G.S. 20-183.7(c)(2) shall be credited to the I & M Air Pollution Control Account and shall be applied to the costs of developing and implementing an air pollution control program for mobile sources.

(c) The Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the State's environmental permitting programs contained within such Department. In addition, the Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the Title V program. The reports shall include, but are not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly. (1987, c. 767, s. 2; 1989, c. 500, s. 121; c. 727, s. 218(104); 1989 (Reg. Sess., 1990), c. 976, s. 2; 1991, c. 552, s. 3; 1991 (Reg. Sess., 1992), c. 1039, s. 12; 1993, c. 400, s. 14; 1995, c. 390, s. 28.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, substituted "105-449.125, 105-449.134, and 105-449.43" for "105-445" in the third sentence of the introductory language of subsection (a).

§ 143-215.3C. Confidential information protected.

(a) Information obtained under this Article or Article 21A or 21B of this Chapter shall be available to the public except that, upon a showing satisfactory to the Commission by any person that information to which the Commission has access, if made public, would divulge methods or processes entitled to protection as trade secrets pursuant to G.S. 132-1.2, the Commission shall consider the information confidential.

(b) Effluent data, as defined in 40 Code of Federal Regulations § 2.302 (1 July 1993 Edition) and emission data, as defined in 40 Code of Federal Regulations § 2.301 (1 July 1993 Edition) is not entitled to confidential treatment under this section.

(c) Confidential information may be disclosed to any officer, employee, or authorized representative of any federal or state agency if disclosure is necessary to carry out a proper function of the Department or other agency or when relevant in any proceeding under this Article or Article 21A or Article 21B of this Chapter.

(d) The Commission shall provide for adequate notice to any person who submits information of any decision that the information is not entitled to confidential treatment and of any decision to release information that the person who submits the information contends is entitled to confidential treatment. Any person who requests information and any person who submits information who is dissatisfied with a decision of the Commission to withhold or release information may request a declaratory ruling from the Commission under G.S. 150B-4 within 10 days after the Commission notifies the person of its decision. The information may not be released by the Commission until the Commission issues a declaratory ruling or, if judicial review of the final agency decision is sought by any party, the information may not be released by the Commission until a final judicial determination has been made. (1993 (Reg. Sess., 1994), c. 694, s. 2.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 694, s. 3, made this section effective upon ratification. The act was ratified July 6, 1994.

The introductory language of Session Laws 1993 (Reg. Sess., 1994), c. 694, s. 2 read: "Part 1 of Article 21 of Chapter 143 of the General Statutes reads as rewritten." Section 2 then sets out this section.

§ 143-215.4. Mailing list for rules; procedures for public input; form of order or decision; seal; official notice.

(a) Mailing List. — When the Commission proposes or adopts a rule establishing water quality classifications and standards under G.S. 143-214.1 or establishing effluent standards or waste treatment management practices under G.S. 143-215, it shall send notice of the action to each person who has requested to be notified of these matters. The Department shall maintain a mailing list for this purpose on which it shall record the name and address of each person who has made a written request to be on the list and the date on which the request was made. In making a request to be put on the list, a person may request to be added to the list for a specified period or indefinitely.

(b) Procedures for Public Input. —

(1) The Commission may, on its own motion or when required by federal law, request public comments on or hold public hearings on matters within the scope of its authority under this Article or Articles 21A or 21B of this Chapter. To request public comments on a matter, the Commission shall notify appropriate agencies of the opportunity to submit written comments to the Commission on the matter and shall publish a notice in a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and informing the public of its opportunity to submit written comments to the Commission on the matter. A public comment period shall extend for at least 30 days after the notice is published.

(2) To hold a public hearing on a matter, the Commission shall notify, by personal service or certified mail, persons directly affected by the matter under consideration and shall publish a notice in a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and the time, date, and place of a public hearing to be held on the matter. A public hearing shall be held no sooner than 20 days after the notice is published. The proceedings at a public hearing held under this subsection shall be recorded. Upon payment of a fee established by the Commission, any person may obtain a copy of the record of the public hearing. After a public hearing, the Commission shall accept written comments for the time period prescribed by the Commission.

(3) This subsection does not apply to rule-making proceedings, contested case hearings, or the issuance of permits required under Title V. The Commission shall establish procedures for public hearings, public notice, and public comment respecting permits required by Title V as provided by G.S. 143-215.111(4).

(c) Decisions and Orders. — An order or decision of the Commission shall state the Commission's findings of fact and conclusions of law and shall state the statute or rule on which the order or decision is based.

(d) Seal/Official Notice. — The Department shall have the authority to adopt a seal which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, rule of procedure or any other official act or records of the Commission or its minutes may be certified by the secretary of the department under his hand and the seal of the Department and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action or proceeding. The Commission shall have the right to take official notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Commission or by any other person or interested party where material, relevant and competent. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 10; c. 1262, s. 23; 1977, c. 374, s. 1; c. 771, s. 4; 1983, c. 296, s. 9; 1987, c. 827, ss. 154, 162, 169; 1993, c. 400, s. 4; 1995, c. 504, s. 10.)

Effect of Amendments. — The 1995 amendment, effective July 28, 1995, deleted the subsection heading "Procedures for Public Input" following the subdivision (b)(1) designation, and added that subsection heading following the subsection (b) designation.

§ 143-215.6A. Enforcement procedures: civil penalties.

CASE NOTES

Cited in House of Raeford Farms, Inc. v. City of Raeford, 112 N.C. App. 522, 435 S.E.2d 829 (1993).

§ 143-215.6B. Enforcement procedures: criminal penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 2. Regulation of Use of Water Resources.

§ 143-215.17. Enforcement procedures.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-215.22B. Roanoke River Basin water rights.

The State reserves and allocates to itself, as protector of the public interest, all rights in the water located in those portions of Kerr Lake and Lake Gaston that are in the State. (1995, c. 504, s. 1.)

Editor's Note. — Session Laws 1995, c. 504, s. 13, made this section effective upon ratification. The Act was ratified July 28, 1995.

§§ 143-215.22C through 143-215.22F: Reserved for future codification purposes.

Part 3. Dam Safety Law.

§ 143-215.26. Construction of dams.

(a) No person shall begin the construction of any dam until at least 10 days after filing with the Department a statement concerning its height, impoundment capacity, purpose, location and other information required by the Department. A person who constructs a dam, including a dam that is otherwise exempt from this Part under subdivisions (4) or (5) of G.S. 143-215.25A(a), shall comply with the malaria control requirements of the Department. If on the basis of this information the Department is of the opinion that the proposed dam is not exempt from the provisions of this Part, it shall so notify the applicant, and construction shall not be commenced until a full application is filed by the applicant and approved as provided by G.S. 143-215.29. The Department may also require of applicants so notified the filing of any additional information it deems necessary, including, but not limited to, streamflow and rainfall data, maps, plans and specifications. Every applicant for approval of a dam subject to the provisions of this Part shall also file with the Department the certificate of an engineer legally qualified in this State. The certificate shall state that the person who files the certificate is responsible for the design of the dam and that the design is safe and adequate.

(b) The Department shall send a copy of each completed application to the State Health Director, the Wildlife Resources Commission, the Department of Transportation, and other State and local agencies it considers appropriate for review and comment. (1967, c. 1068, s. 4; 1973, c. 476, s. 128; c. 507, s. 5; c. 1262, s. 23; 1987, c. 827, s. 176; 1989, c. 727, s. 163; 1993, c. 394, s. 4; 1995, c. 509, s. 80.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, inserted "it" preceding "considers" in subsection (b).

§ 143-215.31. Supervision over maintenance and operation of dams.

(a) The Commission shall have jurisdiction and supervision over the maintenance and operation of dams to safeguard life and property and to satisfy minimum streamflow requirements. The Commission may adopt standards for the maintenance and operation of dams as may be necessary for the purposes of this Part. The Commission may vary the standards applicable to various dams, giving due consideration to the minimum flow requirements of the stream, the type and location of the structure, the hazards to which it may be exposed, and the peril of life and property in the event of failure of a dam to perform its function.

(b) The Department, consistent with rules adopted by the Commission, may impose any condition or requirement in orders and written approvals issued under this Part that is necessary to ensure that stream classifications, water quality standards, and aquatic habitat requirements are met and maintained, including conditions and requirements relating to the release or discharge of designated flows from dams, the location and design of water intakes and outlets, the amount and timing of the withdrawal of water from a reservoir, and the construction of submerged weirs or other devices intended to maintain minimum streamflows.

The Commission shall adopt rules that specify the minimum streamflow in the length of the stream affected.

(c) The minimum streamflow in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream shall be:

(1) The minimum average flow for a period of seven consecutive days that would have an average occurrence of once in 10 years in the absence of the dam, or ten percent (10%) of the average annual flow of the stream in the absence of the dam, whichever is less, if prior to 1 January 1995 the small power producer was either licensed by the Federal Energy Regulatory Commission or held a certificate of public convenience and necessity issued by the North Carolina Utilities Commission.

(2) The minimum average flow for a period of seven consecutive days that would have an average occurrence of once in 10 years in the absence of the dam, or ten percent (10%) of the average annual flow of the stream in the absence of the dam, whichever is greater, if subdivision (1) of this subsection does not apply.

(3) To protect the habitat of the Cape Fear Shiner and other aquatic species, 28 cubic feet per second for any dam that diverts water from 2,500 feet or more of the natural streambed of any stream on which six or more dams operated by small power producers were located on 1 January 1995, notwithstanding subdivisions (1) and (2) of this subsection.

(d) Subsection (c) of this section establishes the policy of this State with respect to minimum streamflows in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream, whether the dam is subject to or exempt from this Part. In its comments and recommendations to the Federal Energy Regulatory Commission regarding the minimum streamflow in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream, the Commission and the Department shall not advocate or recommend a minimum streamflow that exceeds the minimum streamflow that would be required under subsection (c) of this section.

(e) The minimum streamflow in the length of the stream affected by a dam to which subsections (c) and (d) of this section do not apply shall be established as provided in subsection (b) of this section. Subsections (c) and (d) of this section do not apply if the length of the stream affected:

(1) Receives a discharge of waste from a treatment works for which a permit is required under Part 1 of this Article; or

(2) Includes any part of a river or stream segment that:
   a. Is designated as a component of the State Natural and Scenic Rivers System by G.S. 113A-35.1 or G.S. 113A-35.2.
   b. Is designated as a component of the national Wild and Scenic Rivers System by 16 U.S.C. § 1273 and 1274. (1967, c. 1068, s. 9; 1973, c. 1262, s. 23; 1987, c. 827, s. 154; 1993, c. 394, s. 6; c. 553, s. 80; 1995, c. 184, s. 1; c. 439, s. 1.)

Effect of Amendments. — Session Laws 1995, c. 184, s. 1, effective June 6, 1995, moved the subsection (c) designation from before the present second paragraph of subsection (b) to its present location; rewrote subsection (c); and added subsection (d).

Session Laws 1995, c. 439, s. 1, effective June 6, 1995, added subsection (e).

§ 143-215.36. Enforcement procedures.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 6. Floodway Regulation.

§ 143-215.58. Violations and penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 7. Water and Air Quality Reporting.

§ 143-215.67. Acceptance of wastes to disposal systems and air-cleaning devices.

(a) No person subject to the provisions of G.S. 143-215.1, 143-215.108, or 143-215.109 shall willfully cause or allow the discharge of any wastes or air contaminants to a waste-disposal system or air-cleaning device in excess of the capacity of the disposal system or cleaning device or any wastes or air contaminants which the disposal system or cleaning device cannot adequately treat. This subsection does not prohibit the discharge of waste to a treatment works operated by a public utility or unit of local government in excess of the capacity of the treatment works by any person who holds a valid building permit issued prior to the date on which the public utility or unit of local government receives the notice required by subsection (c) of this section if the Commission finds that the discharge of waste will not result in any significant degradation in the quality of the waters ultimately receiving the discharge as provided in subsection (b) of this section.

(b) The Commission may authorize a unit of government subject to the provisions of subsection (a) of this section to accept additional wastes to its waste-disposal system upon a finding by the Commission (i) that the unit of government has secured a grant or has otherwise secured financing for planning, design, or construction of a new or improved waste disposal system which will adequately treat the additional waste, and (ii) the additional waste will not result in any significant degradation in the quality of the waters ultimately receiving the discharge. The Commission may impose such conditions on permits issued under G.S. 143-215.1 as it deems necessary to implement the provisions of this subsection, including conditions on the size, character, and number of additional dischargers. Nothing in this subsection shall be deemed to authorize a unit of government to violate water quality standards, effluent limitations or the terms of any order or permit issued under Part 1 of this Article nor does anything herein preclude the Commission from enforcing by appropriate means the provisions of Part 1 of this Article.

(c) The Commission may impose a moratorium on the addition of waste to a treatment works if the Commission determines that the treatment works is not capable of adequately treating additional waste. The Commission shall give notice of its intention to impose a moratorium at least 45 days prior to the effective date of the moratorium to any person who holds a permit for a treatment works subject to the moratorium. Except to the extent that the provisions of subsection (b) of this section apply, the Commission shall not issue a permit for a sewer line that will connect to a treatment works that the Commission has determined to be incapable of treating additional waste from the date on which the Commission determines that the treatment works is incapable of adequately treating additional waste until the moratorium on the addition of waste to the treatment works is lifted.

(d) A public utility or unit of local government that operates a treatment works shall give notice of a moratorium on the discharge of additional waste to the treatment works within 15 days of the date on which the public utility or unit of local government receives notice of the moratorium from the Commission. The public utility or unit of local government shall give public notice of a moratorium by publication of the notice one time in a newspaper having general circulation in the county in which the treatment works is located. The Commission shall prescribe the form and content of the notice. (1971, c. 1167, s. 9; 1979, c. 566; 1987, c. 827, s. 154; 1989, c. 135, s. 6; 1995, c. 202, s. 1.)

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, added the last sentence in subsection (a); in the first sentence of subsection (b) substituted "subsection (a) of this section" for "G.S. 143-215.67(a)" and made a stylistic change; and added subsections (c) and (d).

§ 143-215.69. Enforcement procedures.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 9. Nonpoint Source Pollution Control Program.

§ 143-215.74. Agriculture cost share program.

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Part 9A. Application of Animal Waste.

§ 143-215.74C. (Effective January 1, 1997) Definitions.

As used in this Part:

(1) "Animal waste" means liquid residuals, resulting from the raising of swine (Sus scrofa), that are collected, treated, stored, or applied to the land through an animal waste management system.

(2) "Animal waste management system" means a combination of structural and nonstructural practices that will properly collect, treat, store, or apply animal waste to the land such that no discharge of pollutants occurs to surface waters of the State by any means except as a result of a storm event more severe than the 25-year, 24-hour storm. For purposes of this Part, "animal waste management system" means a system that is designed to manage and that actually serves more than 250 swine (Sus scrofa).

(3) "Application" means laying, spreading on, irrigating, or injecting animal waste onto land.

(4) "Owner" means the person who owns or controls the land used for agricultural purposes or the person's lessee or designee.

(5) "Operator in charge" means a person who holds a currently valid certificate to operate an animal waste management system and who has primary responsibility for the operation of the system. (1995, c. 544, s. 1.)

Editor's Note. — Session Laws 1995, c. 544, s. 2, made this section effective January 1, 1997.

§ 143-215.74D. (Effective January 1, 1997) Purpose; animal waste management required; certified operators required.

(a) The purpose of this Part is to reduce nonpoint source pollution in order to protect the public health and to conserve and protect the quality of the State's water resources and to encourage the development and improvement of the State's agricultural land for the production of food and other agricultural products.

(b) Animal waste subject to this Part shall be managed so that the application of the waste does not cause a discharge of pollutants

§ 143-215.74D has a delayed effective date. See notes.

to the surface waters of the State, except as a result of a storm event more severe than a 25-year, 24-hour storm.

(c) Only an operator in charge or a person under the supervision of an operator in charge may apply animal waste to the land. The owner or other person in control of the land used for the swine production is responsible for ensuring that the application is performed by an operator in charge or person under the supervision of an operator in charge.

(d) This Part is not intended to supplant any permit otherwise required to be obtained from the Department for the discharge of an animal waste. (1995, c. 544, s. 1.)

Editor's Note. — Session Laws 1995, c. 544, s. 2, made this section effective January 1, 1997.

§ 143-215.74E. Qualifications for operators of animal waste management systems; issuance of certificates.

(a) **(Effective January 1, 1997)** The Department, in cooperation with the Cooperative Extension Service, shall develop and administer a training and certification program for the operator in charge of an animal waste management system. Each applicant shall complete six hours of instruction on the operation of animal waste management systems. The Department shall issue a certificate as an operator in charge to a person who completes the instructional requirements established by this subsection, demonstrates competence in the operation of animal waste management systems by passing an appropriate examination, and pays a ten dollar ($10.00) fee.

(b) **(Effective January 1, 1997)** The certificate shall be renewed annually, provided that the training and examination requirements established under subsection (a) of this section shall be completed at least once every five years. The annual renewal fee shall be ten dollars ($10.00).

(c) **(Effective January 1, 1997)** In addition to other penalties authorized by law, the Department may assess a civil penalty of up to one thousand dollars ($1,000) against a person who violates this Part and, in accordance with the procedure set forth in Chapter 150B of the General Statutes, may suspend or revoke a certificate or may issue a written reprimand to an operator in charge if it finds that the operator in charge has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator in charge is incompetent or unable to properly perform his duties.

(d) **(See editor's note)** The Department shall adopt rules to implement this Part. (1995, c. 544, s. 1.)

Editor's Note. — Session Laws 1995, c. 544, s. 2, made subsection (d) of this section effective July 29, 1995, and the remainder of the section effective January 1, 1997.

ARTICLE 21A.

Oil Pollution and Hazardous Substances Control.

Part 1. General Provisions.

§ 143-215.75. Title.

CASE NOTES

Strict Liability Claim Not Preempted. — Developer's strict liability claim based on migration of methane gases from city landfill based on the North Carolina Oil Pollution and Hazardous Substances Control Act of 1978 was not preempted by the inverse condemnation provision (§ 40A-51). Ashley Park Charlotte Assocs. v. City of Charlotte, 827 F. Supp. 1223 (W.D.N.C. 1993).

Summary judgment based on statute of limitations was inappropriate on claims brought in 1988 under the Oil Pollution and Hazardous Substances Control Act (143-215.75 et seq.) and for negligence, premised on contamination of well water with gasoline, where plaintiffs did not associate the bad taste in their well water with gasoline until 1986, several years after they stopped drinking it, and in that same year were officially informed that their water was contaminated with gasoline. James v. Clark, 118 N.C. App. 178, 454 S.E.2d 826 (1995).

Cited in State ex rel. Cobey v. Ballard, 110 N.C. App. 486, 429 S.E.2d 735 (1993); Ammons v. Wysong & Miles Co., 110 N.C. App. 739, 431 S.E.2d 524 (1993).

§ 143-215.76. Purpose.

CASE NOTES

Quoted in Jordan v. Foust Oil Co., 116 N.C. App. 155, 447 S.E.2d 491 (1994), cert. denied, 339 N.C. 613, 454 S.E.2d 252 (1995).

Cited in Ashley Park Charlotte Assocs. v. City of Charlotte, 827 F. Supp. 1223 (W.D.N.C. 1993).

§ 143-215.77. Definitions.

As used in this Article, unless the context otherwise requires:

(1) "Barrel" shall mean 42 U.S. gallons at 60 degrees Fahrenheit.

(2) "Commission" means the North Carolina Environmental Management Commission.

(3) "Secretary" shall mean the North Carolina Secretary of Environment, Health, and Natural Resources.

(4) "Discharge" shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil or other hazardous substances into waters of the State or into waters outside the territorial limits of the State which affect lands, waters or uses related thereto within the territorial limits of the State, or upon land in such proximity to waters that oil or other hazardous substances is reasonably likely to reach the waters, but shall not include amounts less than quantities which may be harmful to the public health or welfare as determined pursuant to G.S. 143-215.77A; provided, however, that this Article shall not be construed to prohibit the oiling of

driveways, roads or streets for reduction of dust or routine maintenance; provided further, that the use of oil or other hazardous substances, oil-based products, or chemicals on the land or waters by any State, county, or municipal government agency in any program of mosquito or other pest control, or their use by any person in accepted agricultural, horticultural, or forestry practices, or in connection with aquatic weed control or structural pest and rodent control, in a manner approved by the State, county, or local agency charged with authority over such uses, shall not constitute a discharge; provided, further, that the use of a pesticide regulated by the North Carolina Pesticide Board in a manner consistent with the labelling required by the North Carolina Pesticide Law shall not constitute a "discharge" for purposes of this Article. The word "discharge" shall also include any discharge upon land, whether or not in proximity to waters, which is intentional, knowing or willful.

(5) "Having control over oil or other hazardous substances" shall mean, but shall not be limited to, any person, using, transferring, storing, or transporting oil or other hazardous substances immediately prior to a discharge of such oil or other hazardous substances onto the land or into the waters of the State, and specifically shall include carriers and bailees of such oil or other hazardous substances. This definition shall not include any person supplying or delivering oil into a petroleum underground storage tank that is not owned or operated by the person, unless:
  a. The person knows or has reason to know that a discharge is occurring from the petroleum underground storage tank at the time of supply or delivery;
  b. The person's negligence is a proximate cause of the discharge; or
  c. The person supplies or delivers oil at a facility that requires an operating permit under G.S. 143-215.94U and a currently valid operating permit certificate is not held or displayed at the time of the supply or delivery.

(6) Repealed by Session Laws 1979, c. 981, s. 5.

(7) "Department" shall mean the Department of Environment, Health, and Natural Resources.

(8) "Oil" shall mean oil of any kind and in any form, including, but specifically not limited to, petroleum, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, petroleum related products or by-products, and all other liquid hydrocarbons, regardless of specific gravity, whether singly or in combination with other substances.

(9) "Bailee" shall mean any person who accepts oil or other hazardous substances to hold in trust for another for a special purpose and for a limited period of time.

(10) "Carrier" shall mean any person who engages in the transportation of oil or other hazardous substances for compensation.

(11) "Oil terminal facility" shall mean any facility of any kind and related appurtenances located in, on or under the surface of any land, or water, including submerged lands,

which is used or capable of being used for the purpose of transferring, transporting, storing, processing, or refining oil; but shall not include any facility having a storage capacity of less than 500 barrels, nor any retail gasoline dispensing operation serving the motoring public. A vessel shall be considered an oil terminal facility only in the event that it is utilized to transfer oil from another vessel to an oil terminal facility; or to transfer oil between one oil terminal facility and another oil terminal facility; or is used to store oil.

(12) "Operator" shall mean any person owning or operating an oil terminal facility or pipeline, whether by lease, contract, or any other form of agreement.

(13) "Person" shall mean any and all natural persons, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.

(14) "Pipeline" shall mean any conduit, pipe or system of pipes, and any appurtenances related thereto and used in conjunction therewith, used, or capable of being used, for transporting or transferring oil to, from, or between oil terminal facilities.

(15) "Restoration" or "restore" shall mean any activity or project undertaken in the public interest or to protect public interest or to protect public property or to promote the public health, safety or welfare for the purpose of restoring any lands or waters affected by an oil or other hazardous substances discharge as nearly as is possible or desirable to the condition which existed prior to the discharge.

(16) "Transfer" shall mean the transportation, on-loading or off-loading of oil or other hazardous substances between or among two or more oil terminal facilities; between or among oil terminal facilities and vessels; and between or among two or more vessels.

(17) "Vessel" shall include every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and shall include, but shall not be limited to, barges and tugs; provided that the term "vessel" as used herein shall not apply to any pleasure, sport or commercial fishing vessel which has a fuel capacity of less than 500 gallons and is not used to transport petroleum, petroleum products, or general cargo.

(18) "Waters" shall mean any stream, river, creek, brook, run, canal, swamp, lake, sound, tidal estuary, bay, reservoir, waterway, wetlands, or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State, or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction. (1973, c. 534, s. 1; c. 1262, s. 23; 1977, c. 771, s. 4; 1979, c. 535, ss. 3-10; c. 981, ss. 3-5; 1979, 2nd Sess., c. 1209, ss. 1, 2; 1987, c. 827, s. 155; 1989, c. 656, s. 1; c. 727, s. 218(111); 1995, c. 377, s. 12.)

Effect of Amendments. — The 1995 amendment, effective July 5, 1995, in subdivision (5) added the last sentence of the introductory language, and subdivisions (5)a., (5)b., and (5)c.

CASE NOTES

Statutory "control over" oil is not necessarily coextensive with physical control or possession of oil or ownership of oil at the time of its discharge, and since carriers and bailees are expressly included in the definition of "having control over," one need not have an ownership interest in oil to "have control over" it. Jordan v. Foust Oil Co., 116 N.C. App. 155, 447 S.E.2d 491 (1994), cert. denied, 339 N.C. 613, 454 S.E.2d 252 (1995).

Part 2. Oil Discharge Controls.

§ 143-215.83. Discharges.

CASE NOTES

Quoted in Jordan v. Foust Oil Co., 116 N.C. App. 155, 447 S.E.2d 491 (1994), cert. denied, 339 N.C. 613, 454 S.E.2d 252 (1995).

§ 143-215.84. Removal of prohibited discharges.

(a) Person Discharging. — Any person having control over oil or other hazardous substances discharged in violation of this Article shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the Commission. The owner of an underground storage tank who is the owner of the tank only because he is the owner of the land on which the underground storage tank is located, who did not know or have reason to know that the underground storage tank was located on his property, and who did not become the owner of the land as the result of a transfer or transfers to avoid liability for the underground storage tank shall not be deemed to be responsible for a release or discharge from the underground storage tank.

(a1) The Commission shall not require collection or removal of a discharge or restoration of an affected area under subsection (a) of this section if the person having control over oil or other hazardous substances discharged in violation of this Article complies with rules governing the collection and removal of a discharge and the restoration of an affected area adopted by the Commission pursuant to G.S. 143-214.1 or G.S. 143-215.94V. This subsection shall not be construed to affect the rights of any person under this Article or any other provision of law.

(b) Removal by Department. — Notwithstanding the requirements of subsection (a) of this section, the Department is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by other cooperating State or local agencies and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat or disperse oil or other hazardous substances discharged onto the land or into the waters of the State and to perform any necessary restoration. The Secretary shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel and for use of the State's equipment and material. The authority granted by this subsection shall be limited to projects and activities that are designed to protect the public interest or public property, and shall be compatible with the National Contingency Plan established pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251 et seq.

(c), (d) Repealed by Session Laws 1989, c. 656, s. 2, effective July 19, 1989. (1973, c. 534, s. 1; c. 1262, s. 23; 1975, c. 885; 1977, c. 771, s. 4; 1979, c. 535, s. 15; 1987, c. 827, ss. 154, 193; 1989, c. 656, s. 2; 1991, c. 538, s. 14; 1995, c. 377, s. 13.)

Effect of Amendments. — The 1995 amendment, effective July 5, 1995, added subsection (a1).

§ 143-215.85. Required notice.

CASE NOTES

Quoted in Jordan v. Foust Oil Co., 116 N.C. App. 155, 447 S.E.2d 491 (1994), cert. denied, 339 N.C. 613, 454 S.E.2d 252 (1995).

§ 143-215.88B. Enforcement procedures: criminal penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-215.93. Liability for damage caused.

CASE NOTES

Statutory "control over" oil is not necessarily coextensive with physical control or possession of oil or ownership of oil at the time of its discharge, and since carriers and bailees are expressly included in the definition of "having control over," one need not have an ownership interest in oil to "have control over" it. Jordan v. Foust Oil Co., 116 N.C. App. 155, 447 S.E.2d 491 (1994), cert. denied, 339 N.C. 613, 454 S.E.2d 252 (1995).

Liability Shown. — Because defendant delivered gasoline several times into tanks it knew or should have known were leaking, these acts tended to show some legal responsibility on defendant's part for the unauthorized seepage and supported the claim of trespass, even though defendants did not own the land or the underground, storage tanks. Jordan v. Foust Oil Co., 116 N.C. App. 155, 447 S.E.2d 491 (1994), cert. denied, 339 N.C. 613, 454 S.E.2d 252 (1995).

Liability Not Shown. — Appellants failed to show that the potential sources of contamination from defendant's property caused them damage such that strict liability under the Oil Pollution and Hazardous Substances Control Act did not obtain. Ammons v. Wysong & Miles Co., 110 N.C. App. 739, 431 S.E.2d 524, cert. denied, 334 N.C. 619, 435 S.E.2d 332 (1993).

Cited in Ashley Park Charlotte Assocs. v. City of Charlotte, 827 F. Supp. 1223 (W.D.N.C. 1993).

Part 2A. Leaking Petroleum Underground Storage Tank Cleanup.

§ 143-215.94A. Definitions.

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part and Part 2B of this Article:

(0) "Affiliate" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1994 Edition), which defines "affiliate" as a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

(1) "Commercial Fund" means the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund established pursuant to this Part.

(2) "Commercial underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term "commercial underground storage tank" does not include any:

a. Farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

b. Underground storage tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;

c. Underground storage tank of more than 1,100 gallon capacity used for storing heating oil for consumptive use on the premises where stored by four or fewer households;

d. Septic tank;

e. Pipeline facility (including gathering lines) regulated under:

1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 et seq.);
2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.); or
3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;

f. Surface impoundment, pit, pond, or lagoon;

g. Storm water or waste water collection system;

h. Flow-through process tank;

i. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
j. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

(3) "Council" means the North Carolina Petroleum Underground Storage Tank Funds Council.

(3a) "Facility" means an underground storage tank, or two or more underground storage tanks located in close proximity to each other and having the same owner or operator, that are located on a single tract of land or on contiguous tracts of land that are owned or controlled by the same person. As used in this subdivision, the terms "owner", "operator", and "person" include any affiliate, parent, and subsidiary of the owner, operator, or person, respectively. The owner or person having control of the land on which an underground storage tank is located, or on which two or more underground storage tanks are located, need not be the owner or operator of the underground storage tank or underground storage tanks. The term "facility", as defined in this subdivision, does not apply to a "pipeline facility", as that phrase is used in subdivisions (2) and (7) of this section.

(4) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, or No. 6 technical grades of fuel oil; other residual fuel oils, including Navy Special Fuel Oil and Bunker C; and other fuels when used as substitutes for one of these fuel oils for the purpose of heating.

(5) "Loan Fund" means the Groundwater Protection Loan Fund.

(6) "Noncommercial Fund" means the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund established pursuant to this Part.

(7) "Noncommercial underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term "noncommercial storage tank" does not include any:

a. Commercial underground storage tanks;
b. Septic tank;
c. Pipeline facility (including gathering lines) regulated under:
    1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 et seq.);
    2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.); or
    3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;
d. Surface impoundment, pit, pond, or lagoon;
e. Storm water or waste water collection system;
f. Flow-through process tank;

g. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

h. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

(8) "Operator" means any person in control of, or having responsibility for, the operation of an underground storage tank.

(9) "Owner" means:

a. In the case of an underground storage tank in use on 8 November 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of petroleum products; and

b. In the case of an underground storage tank in use before 8 November 1984, but no longer in use on or after that date, any person who owned such tank immediately before the discontinuation of its use.

(9a) "Parent" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1994 Edition), which defines "parent" as an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

(10) "Petroleum" or "petroleum product" means crude oil or any fraction thereof which is a liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), including any such liquid which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel. The terms "petroleum" and "petroleum product" do not include any hazardous substance as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601(14) as amended; any substance regulated as a hazardous waste under Subtitle C of Title II of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended; or any mixture of petroleum or a petroleum product containing any such hazardous substance or hazardous waste in greater than de minimis quantities.

(11) "Subsidiary" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1994 Edition), which defines "subsidiary" as an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 3; 1991, c. 538, s. 1; 1995, c. 377, s. 4.)

Effect of Amendments. — The 1995 amendment, effective July 5, 1995, added "and Part 2B of this Article" at the end of the introductory language; added subdivisions (0), (3a), (9a) and (11).

§ 143-215.94B. Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(a) There is established under the control and direction of the Department the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This Commercial Fund shall be a nonreverting revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, other monies paid to it or recovered on behalf of the Commercial Fund, and fees paid pursuant to this Part.

(b) The Commercial Fund shall be used for the payment of the following costs up to an aggregate maximum of one million dollars ($1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage tank:

(1) For discharges or releases discovered or reported between 30 June 1988 and 31 December 1991 inclusive, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of fifty thousand dollars ($50,000) per occurrence.

(2) For discharges or releases discovered on or after 1 January 1992 and reported between 1 January 1992 and 31 December 1993 inclusive, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars ($20,000) per occurrence.

(2a) For discharges or releases discovered and reported on or after 1 January 1994 and prior to 1 January 1995, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars ($20,000) if the owner or operator (i) notifies the Department prior to 1 January 1994 of its intent to permanently close the tank in accordance with applicable regulations or to upgrade the tank to meet the requirements that existing underground storage tanks must meet by 22 December 1998, (ii) commences closure or upgrade of the tank prior to 1 July 1994, and (iii) completes closure or upgrade of the tank prior to 1 January 1995.

(3) For discharges or releases reported on or after 1 January 1994, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars ($20,000) if, prior to the discharge or release, the commercial underground storage tank from which the discharge or release occurred met the performance standards applicable to tanks installed after 22 December 1988 or met the requirements that existing underground storage tanks must meet by 22 December 1998.

(4) For discharges or releases reported on or after 1 January 1994 from a commercial underground storage tank that does not qualify under subdivision (2a) of this subsection or does not meet the standards in subdivision (3) of this subsection, sixty percent (60%) of the costs per occurrence of the cleanup of environmental damage as required by G.S. 143-215.94E(a) that exceeds twenty thousand dollars ($20,000) but is not more than one hundred fifty-seven thousand five hundred dollars ($157,500) and one hundred percent (100%) of the costs above this amount, up to the limits established in this section.

(5) Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars ($100,000) per occurrence.

(6) Reimbursing the State for damages or other costs incurred as a result of a loan from the Loan Fund. The per occurrence limit does not apply to reimbursements to the State under this subdivision.

(b1) In the event that two or more discharges or releases at any one facility, the first of which was discovered or reported on or after 30 June 1988, result in more than one plume of soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the payment of the costs of the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount shall be calculated as follows:

(1) Each discharge or release shall be considered separately as if it were the only discharge or release, and the cost for which the owner or operator is responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this section, whichever are applicable, shall be determined for each discharge or release. For each discharge or release for which subdivision (4) of subsection (b) of this section is applicable, the cost for which the owner or operator is responsible, for the purpose of this subsection, shall be seventy-five thousand dollars ($75,000). For purposes of this subsection, two or more discharges or releases that result in a single plume of soil, surface water, or groundwater contamination shall be considered as a single discharge or release.

(2) The multiple discharge amount shall be the lesser of:
  a. The sum of all the costs determined as set out in subdivision (1) of this subsection; or
  b. The product of the highest of the costs determined as set out in subdivision (1) of this subsection multiplied by one and one-half (1½).

(b2) In the event that the aggregate costs per occurrence described in subsection (b) or (b1) of this section exceed one million dollars ($1,000,000), the Commercial Fund shall be used for the payment of eighty percent (80%) of the costs in excess of one million dollars ($1,000,000) up to a maximum of one million five hundred thousand dollars ($1,500,000). The Department shall not pay or reimburse costs under this subsection unless the owner, operator, or landowner eligible for reimbursement under G.S. 143-215.94E(b1) submits proof that the owner, operator, or landowner eligible for reimbursement under G.S. 143-215.94E(b1) has paid at least twenty percent (20%) of the costs for which reimbursement is sought.

(c) The Commercial Fund is to be available on an occurrence basis, without regard to number of occurrences associated with tanks owned or operated by the same owner or operator.

(d) The Commercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or vehicle.

(2) The removal or replacement of any tank, pipe, fitting or related equipment.

(3) Costs incurred as a result of a discharge or release of petroleum from a transmission pipeline.
(4) Costs intended to be paid by the Noncommercial Fund.
(5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part.
(6) Costs paid or reimbursed by or from any source other than the Commercial Fund, including but not limited to, any payment or reimbursement made under a contract of insurance.

(e) The Commercial Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 4; 1991, c. 538, ss. 2, 3; 1991 (Reg. Sess., 1992), c. 817, s. 1; 1993, c. 400, s. 15; c. 402, s. 1; 1995, c. 377, s. 5.)

Editor's Note. — Session Laws 1995, c. 377, s. 17, provides that the amendments by Session Laws 1995, c. 377, s. 5, to this section are applicable to any pending claim for reimbursement, and applicable retroactively to any discharge or release that was discovered or reported on or after June 30, 1988, except that subsection (d)(6) is applicable only to a discharge or release that was discovered or reported on or after March 30, 1990.

Effect of Amendments. — The 1995 amendment, effective July 5, 1995, deleted "that at the time the discharge or release is discovered or reported is beneath the surface of the ground or has been removed within the preceding 120 days" from the end of the introductory language in subsection (b); rewrote subsection (b1); added subsection (b2); and in subsection (d) added subdivision (d)(6), and made punctuation changes. For the effective date of these amendments, see the Editor's note.

§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.

(a) The owner or operator of a commercial petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee according to the following schedule:
(1) For each petroleum commercial underground storage tank of 3,500 gallons or less capacity — one hundred fifty dollars ($150.00).
(2) For each petroleum commercial underground storage tank of more than 3,500 gallon capacity — two hundred twenty-five dollars ($225.00).

(b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January and remaining in use on or after 1 December of that year, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in use in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. For a petroleum commercial underground storage tank that is permanently removed from use in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating fee for a tank that is first placed in use or permanently removed during a calendar year under the preceding two sentences, a partial month shall count as a month, except that where a tank is permanently removed and replaced by another tank, the total of the annual operating fee for the tank that is removed and the replacement tank shall not exceed the annual operating fee for the replacement tank. The annual operating fee shall be due and payable on the first day of the month in accordance with a staggered schedule established by the Department. The Department shall implement a staggered schedule to the end that the total amount of fees to be collected by the Department is approximately the same each quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. The fee for all commercial underground storage tanks located at the same facility shall be due at the same time. A person who owns or operates 12 or more commercial petroleum storage tanks may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar quarter, provided that the fee for all commercial underground storage tanks located at the same facility shall be due at the same time.

(c) Beginning no later than sixty days before the first due date of the annual operating fee imposed by this section, any person who deposits a petroleum product in a commercial underground storage tank that would be subject to the annual operating fee shall, at least once in each calendar year during which such deposit of a petroleum product is made, notify the owner or operator of the duty to pay the annual operating fee. The requirement to notify pursuant to this subsection does not constitute a duty owed by the person depositing a petroleum product in a commercial underground storage tank to the owner or operator and the person depositing a petroleum product in an underground storage tank shall not incur any liability to the owner or operator for failure to give notice of the duty to pay the operating fee.

(d) Repealed by Session Laws 1991, c. 538, s. 3.1.

(e) An owner or operator of a commercial underground storage tank who fails to pay an annual operating fee due under this section within 30 days of the date that the fee is due shall pay, in addition to the fee, a late penalty of five dollars ($5.00) per day per commercial underground storage tank, up to a maximum equal to the annual operating fee due. The Department may waive a late penalty in whole or in part if:

(1) The late penalty was incurred because of the late payment or nonpayment of an annual operating fee by a previous owner or operator.

(2) The late penalty was incurred because of a billing error for which the Department is responsible.

(3) Where the late penalty was incurred because the annual operating fee was not paid by the owner or operator due to inadvertence or accident.

(4) Where payment of the late penalty will prevent the owner or operator from complying with any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases. (1987

(Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 5; 1991, c. 538, ss. 3.1, 4, 5; 1993, c. 400, s. 15; c. 402, s. 2; 1995, c. 377, s. 6.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, in subsection (b) added the next to last sentence, and added "provided that the fee for all commercial underground storage tanks located at the same facility shall be due at the same time" at the end of the last sentence; and in subsection (e) substituted "annual operating fee" for "tank fee" twice in the first sentence and made a related change, added the last sentence of the introductory language, added subdivisions (e)(1) through (e)(4), and made a stylistic change.

§ 143-215.94D. Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(a) There is established under the control and direction of the Department the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This Noncommercial Fund shall be a nonreverting revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, or other monies paid to it or recovered on behalf of the Noncommercial Fund.

(b) The Noncommercial Fund shall be used for the payment of the costs set out in subsection (b1) of this section, up to an aggregate maximum of one million dollars ($1,000,000) per occurrence resulting from a discharge or release of a petroleum product from:

(1) Noncommercial underground storage tanks if the discharge or release meets the minimum priority criteria for corrective action established by the Department.

(2) Commercial underground storage tanks if the owner or operator cannot be identified or fails to proceed with the cleanup.

(3) Commercial underground storage tanks that were taken out of operation prior to 1 January 1974 if, at the time the discharge or release is discovered, neither the owner or operator owns or leases the lands on which the tank is located.

(4) Commercial underground storage tanks if the owner of the commercial underground storage tank is the owner only as a result of owning the land on which the commercial underground storage tank is located, the owner did not know or have reason to know that the underground storage tank was located on the property, and the land was not transferred to the owner to avoid liability for the commercial underground storage tank.

(b1) The Noncommercial Fund shall be used for the payment of the costs of:

(1) The cleanup of environmental damage as required by G.S. 143-215.94E(a); and

(2) Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars ($100,000) per occurrence.

(3) Reimbursing the State for damages or other costs incurred as a result of a loan from the Loan Fund. The per occurrence limit does not apply to reimbursements to the State under this subdivision.

(b2) The Noncommercial Fund may be used by the Department for the payment of costs necessary to render harmless any commercial or noncommercial underground storage tank from which a discharge or release has not occurred but which poses an imminent hazard to the environment if the owner or operator cannot be identified or located, or if the owner or operator fails to take action to render harmless the underground storage tank within 90 days after having been notified of the imminent hazard posed by the underground storage tank. The Secretary may seek to recover the costs of the action from the owner or operator as provided in G.S. 143-215.94G.

(c) The Noncommercial Fund is to be available on an occurrence basis, without regard to number of occurrences associated with tanks owned or operated by the same owner or operator.

(d) The Noncommercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or vehicle.
(2) The removal or replacement of any tank, pipe, fitting or related equipment.
(3) Costs incurred as a result of a discharge or release of petroleum from a transmission pipeline.
(4) Costs intended to be paid for by the Commercial Fund.
(5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part.
(6) Costs paid or reimbursed by or from any source other than the Noncommercial Fund, including, but not limited to, any payment or reimbursement made under a contract of insurance.

(e) The Noncommercial Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S: 147-69.2 and G.S. 147-69.3. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 6; 1991, c. 538, s. 6; 1991 (Reg. Sess., 1992), c. 890, s. 17; 1993, c. 400, s. 15; 1995, c. 377, s. 7.)

Editor's Note. —

Session Laws 1995, c. 377, s. 17, provides that the amendments by Session Laws 1995, c. 377, s. 7, to this section are applicable to any pending claim for reimbursement, and applicable retroactively to any discharge or release that was discovered or reported on or after June 30, 1988, except that subsection (d)(6) is applicable only to a discharge or release that was discovered or reported on or after March 30, 1990.

Effect of Amendments. — The 1995 amendment, effective July 5, 1995, in subsection (d) added subdivision (d)(6) and made punctuation changes. For the effective date of these amendments, see Editor's note.

§ 143-215.94E. Rights and obligations of the owner and operator.

(a) Upon a determination that a discharge or release of petroleum from an underground storage tank has occurred, the owner or operator shall notify the Department pursuant to G.S. 143-215.85. The owner or operator shall immediately undertake to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article.

(b) In the case of a discharge or release from a commercial underground storage tank where the owner or operator has been identified and has proceeded with cleanup, the owner or operator may elect to have the Commercial Fund pay or reimburse the owner or operator for any costs described in subsection (b) or (b1) of G.S. 143-215.94B that exceed the amounts for which the owner or operator is responsible under that subsection. The sum of payments by the owner or operator and the payments from the Commercial Fund shall not exceed one million dollars ($1,000,000) per discharge or release except as provided in G.S. 143-215.94B(b2).

(b1) In the case of a discharge or release from a commercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, if the current landowner of the land in which the commercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Commercial Fund pay or reimburse the current landowner for any costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) that exceed the amounts for which the owner or operator is responsible under that subsection. The current landowner is not eligible for payment or reimbursement until the current landowner has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) for which the owner or operator is responsible. Eligibility for reimbursement under this subsection may be transferred from a current landowner who has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) to a subsequent landowner. The sum of payments from the Commercial Fund and from all other sources shall not exceed one million dollars ($1,000,000) per discharge or release except as provided in G.S. 143-215.94B(b2). This subsection shall not be construed to require a current landowner to cleanup a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law. This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. In the event that an owner or operator is subsequently identified or located, the Secretary shall seek reimbursement as provided in G.S. 143-215.94G(d). The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).

(c) In the case of a discharge or release from a noncommercial underground storage tank or a commercial underground storage tank eligible for the Noncommercial Fund in accordance with G.S. 143-215.94D(b), the owner or operator may elect to have the Noncommercial Fund pay or reimburse the owner or operator for the costs described in G.S. 143-215.94D(b1) up to a maximum of one million dollars ($1,000,000) per discharge or release.

(d) In any case where the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) exceed one million dollars ($1,000,000), or one million five hundred thousand dollars ($1,500,000) if G.S. 143-215.94B(b2) applies, the provisions of Article 21A of this Chapter or any other applicable statute or common law principle regarding liability shall apply for the amount in excess of one million dollars ($1,000,000) or, if G.S. 143-215.94B(b2) applies, one million five hundred thousand dollars ($1,500,000). Nothing contained in this Part shall limit or modify any liability that any party may have pursuant to Article 21A of this Chapter, any other applicable statute, or at common law.

(e) When the owner or operator pays the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) resulting from a discharge or release of petroleum from an underground storage tank, the owner or operator may seek reimbursement from the appropriate fund for any costs he may elect to have either the Commercial Fund or the Noncommercial Fund pay in accordance with subsections (b) and (c) of this section. The Department shall reimburse the owner or operator for all costs he may elect to have the appropriate fund pay that the Department determines to be reasonable and necessary and for which appropriate documentation is submitted. The Department may contract for any services necessary to evaluate any claim for reimbursement or compensation from either the Commercial Fund or the Noncommercial Fund, may contract for any expert witness or consultant services necessary to defend any decision to pay or deny any claim for reimbursement, and may pay the cost of these services from the fund against which the claim is made; provided that in any fiscal year the Department shall not expend from either fund more than one percent (1%) of the unobligated balance of the fund on 30 June of the previous fiscal year. The cost of contractual services to evaluate a claim or for expert witness or consultant services to defend a decision with respect to a claim shall be included as costs under G.S. 143-215.94B(b) and G.S. 143-215.94D(b1). The Commission shall adopt rules governing reimbursement of necessary and reasonable costs. An owner or operator whose claim for reimbursement is denied may appeal a decision of the Department as provided in Article 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for reimbursement under this section and the cleanup extends beyond a period of three months, the owner or operator may apply to the Department for interim reimbursements to which he is entitled under this section on a quarterly basis.

(e1) The Department shall not pay any third party or reimburse any owner or operator who has paid any third party pursuant to any settlement agreement or consent judgment relating to a claim by or on behalf of a third party for compensation for bodily injury or property damage unless the Department has approved the settlement agreement or consent judgment prior to entry into the settlement agreement or consent judgment by the parties or entry of a consent judgment by the court. The approval or disapproval by the Department of a proposed settlement agreement or consent judgment shall be subject to challenge only in a contested case filed under Chapter 150B of the General Statutes. The Secretary shall make the final agency decision in a contested case proceeding under this subsection.

(f) The Department shall not reimburse any owner or operator until the fund from which reimbursement will be made reaches one million dollars ($1,000,000).

(f1) Any person seeking payment or reimbursement from either the Commercial Fund or the Noncommercial Fund shall certify to the Department that the costs to be paid or reimbursed by the Commercial Fund or the Noncommercial Fund are not eligible to be paid or reimbursed by or from any other source, including any contract of insurance. If any cost paid or reimbursed by the Commercial Fund or the Noncommercial Fund is eligible to be paid or reimbursed by or from another source, that cost shall not be paid from, or if paid shall be repaid to, the Commercial Fund or the Noncommercial Fund. As used in this Part, the phrase "any other source including any contract of insurance" does not include self-insurance.

(g) No owner or operator shall be reimbursed pursuant to this section, and the Department shall seek reimbursement of the appropriate fund or of the Department for any monies disbursed from the appropriate fund or expended by the Department if:

(1) The owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases;

(2) The discharge or release is the result of the owner's or operator's willful or wanton misconduct; or

(3) The owner or operator has failed to pay any annual tank operating fee due pursuant to G.S. 143-215.94C.

(h) Subdivision (1) of subsection (g) of this section shall not be construed to limit the right of an owner or operator to contest notices of violation or orders issued by the Department. Subdivision (1) of subsection (g) of this section shall not apply to a payment or reimbursement pursuant to this section if, at the time of the discharge or release, the owner or operator holds a valid operating permit as required by G.S. 143-215.94U.

(i) An owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank as provided in G.S. 143-215.94B(b)(2a) shall commence the closure or upgrade prior to 1 July 1994 and shall complete the closure or upgrade prior to 1 January 1995. An owner who notifies the Department of an intention to close or upgrade a commercial underground storage tank and who fails to commence and complete the closure as specified in this subsection is subject to a civil penalty as provided in G.S. 143-215.94K. The provisions of G.S. 143-215.94B(b)(2a) do not apply if an owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank fails to commence or complete the closure or upgrade within the dates specified in this subsection. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 7; 1991, c. 538, ss. 7, 22; 1991 (Reg. Sess., 1992), c. 817, s. 2; 1993, c. 400, s. 15; c. 402, s. 3; 1995, c. 377, s. 8.)

Editor's Note. —

Session Laws 1995, c. 377, s. 17, provides that the amendments by Session Laws 1995, c. 377, s. 8, to this section are applicable to any pending claim for reimbursement, and applicable retroactively to any discharge or release that was discovered or reported on or after June 30, 1988, except that subsection (f1) is applicable only to payments and reimbursements made on or after July 5, 1995 and only to costs that are eligible to be paid or reimbursed from either the Commercial Fund or the Noncommercial Fund for a discharge or release that was discovered or reported on or after March 30, 1990.

Effect of Amendments. — The 1995 amendment, effective July 5, 1995, in subsection (b) substituted "subsection (b) or (b1) of G.S. 143-215.94B" for "G.S. 143-215.94B(b)" in the first sentence, and added "except as provided in G.S. 143-215.94B(b2)" in the second sentence; in subsection (b1) added "or G.S. 143-215.94B(b1)" in the first, second and third sentences, and added "except as provided in G.S. 143-215.94B(b2)" in the fourth sentence; in the first sentence of subsection (d) added "143-215.94B(b1)", "or one million five hundred thousand dollars ($1,500,000) if G.S. 143-215.94B(b2) applies", "principle", and "or, if G.S. 143-215.94B(b2) applies, one million five hundred thousand dollars ($1,500,000)", and made a stylistic change; in subsection (e) added "143-215.94B(b1)" in the first sentence, inserted "Fund" following "Commercial", added the third and fourth sentences, and made stylistic changes; added subsections (e1) and (f1); and added the last sentence in subsection (h). For the effective date of these amendments, see Editor's note.

§ 143-215.94G. Authority of the Department to engage in cleanups; actions for fund reimbursement.

(a) The Department may use staff, equipment, or materials under its control or provided by other cooperating federal, State, or local agencies and may contract with any agent or contractor it deems appropriate to investigate a release, to develop and implement a cleanup plan, to provide interim alternative sources of drinking water to third parties, and to pay the initial costs for providing permanent alternative sources of drinking water to third parties, and shall pay the costs resulting from commercial underground storage tanks from the Commercial Fund and shall pay the costs resulting from noncommercial underground storage tanks from the Noncommercial Fund, whenever there is a discharge or release of petroleum from any of the following:

(1) A noncommercial underground storage tank.

(2) An underground storage tank whose owner or operator cannot be identified or located.

(3) An underground storage tank whose owner or operator fails to proceed as required by G.S. 143-215.94E(a).

(4) A commercial underground storage tank taken out of operation prior to 1 January 1974 if, when the discharge or release is discovered, neither the owner nor operator owns or leases the land on which the underground storage tank is located.

(a1) Every State agency shall provide to the Department to the maximum extent feasible such staff, equipment, and materials as may be available and useful to the development and implementation of a cleanup program.

(a2) The cost of any action authorized under subsection (a) of this section shall be paid, to the extent funds are available, from the following sources in the order listed:

(1) Any funds to which the State is entitled under any federal program providing for the cleanup of petroleum discharges or releases from underground storage tanks, including, but not limited to, the Leaking Underground Storage Tank Trust Fund established pursuant to 26 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).

(2) The Commercial Fund or the Noncommercial Fund.

(b) Whenever the discharge or release of a petroleum product is from a commercial underground storage tank, the Department may supervise the cleanup of environmental damage required by G.S.

143-215.94E(a). If the owner or operator elects to have the Commercial Fund reimburse or pay for any costs allowed under subsection (b) or (b1) of G.S. 143-215.94B, the Department shall require the owner or operator to submit documentation of all expenditures claimed for the purposes of establishing that the owner or operator has spent the amounts required to be paid by the owner or operator pursuant to and in accordance with G.S. 143-215.94E(b). The Department shall allow credit for all expenditures that the Department determines to be reasonable and necessary. The Department may not pay for any costs for which the Commercial Fund was established until the owner or operator has paid the amounts specified in G.S. 143-215.94E(b).

(c) The Secretary shall keep a record of all expenses incurred for the services of State personnel and for the use of the State's equipment and material.

(d) The Secretary shall seek reimbursement through any legal means available, for:

(1) Any costs not authorized to be paid from either the Commercial or the Noncommercial Fund;

(2) The amounts provided for in G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank is later identified or located;

(3) The amounts provided for in G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank failed to proceed as required by G.S. 143-215.94E(a);

(3a) The amounts provided for by G.S. 143-215.94B(b)(5) required to be paid by the owner or operator to third parties for the cost of providing interim alternative sources of drinking water to third parties and the initial cost of providing permanent alternative sources of drinking water to third parties;

(4) Any funds due under G.S. 143-215.94E(g); and

(5) Any funds to which the State is entitled under any federal program providing for the cleanup of petroleum discharges or releases from underground storage tanks.

(e) In the event that a civil action is commenced to secure reimbursement pursuant to subdivisions (1) through (4) of subsection (d) of this section, the Secretary may recover, in addition to any amount due, the costs of the action, including but not limited to reasonable attorney's fees and investigation expenses. Any monies received or recovered as reimbursement shall be paid into the appropriate fund or other source from which the expenditures were made.

(f) In the event that a recovery equal to or in excess of the amounts required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) is recovered pursuant to subdivisions (2) and (3) of subsection (d) of this section for the costs described in G.S. 143-215.94B(b) or G.S. 143-215.94B(b1), the Department shall transfer funds from the Commercial Fund that would have been paid from the Commercial Fund pursuant to subsection (b) or (b2) of G.S. 143-215.94B if the owner or operator had proceeded with the cleanup, but which were paid from the Noncommercial Fund, into the Noncommercial Fund. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652. s. 9; 1991, c. 538, ss. 8, 23; 1993, c. 400, s. 15; c. 402, s. 4; 1995, c. 377, s. 9.)

Editor's Note. —

Session Laws 1995, c. 377, s. 17, provides that the amendments by Session Laws 1995, c. 377, s. 9, to this section are applicable to any pending claim for reimbursement, and applicable retroactively to any discharge or release that was discovered or reported on or after June 30, 1988.

Effect of Amendments. — The 1995 amendment, effective July 5, 1995, added "to investigate a release" in the introductory language of subsection (a); substituted "subsection (b) or (b1) of G.S. 143-215.94B" for "G.S. 143-215.94B(b)" in the second sentence of subsection (b); added "or G.S. 143-215.94B(b1)" in subdivisions (d)(2) and (d)(3); and in subsection (f) inserted "or G.S. 143-215.94B(b1)", and substituted "subsection (b) or (b2) of G.S. 143-215.94B" for "G.S. 143-215.94B(b)." For the effective date of these amendments, see Editor's note.

§ 143-215.94I. Insurance pools authorized; requirements.

(a) As used in this section, "Commissioner" means the Commissioner of Insurance of the State of North Carolina.

(b) Owners and operators of underground storage tanks may demonstrate financial responsibility by establishing insurance pools which provide insurance coverage to pool members in at least the minimum amounts specified in G.S. 143-215.94H. Each such pool shall be operated by a board of trustees consisting of at least five persons who are elected or appointed officials of pool members. The board of trustees of each pool shall:

(1) Establish terms and conditions of coverage within the pool, including underwriting criteria, applicable deductible levels, the maximum level of claims that the pool will self-insure, and exclusions of coverage;

(2) Ensure that all valid claims are paid promptly;

(3) Take all necessary precautions to safeguard the assets of the pool;

(4) Maintain minutes of its meetings and make those minutes available to the Commissioner;

(5) Designate an administrator to carry out the policies established by the board of trustees and to provide continual management of the pool, and delineate in written minutes of its meetings the areas of authority it delegates to the pool's administrator;

(6) Establish the amount of insurance to be purchased by the pool to provide coverage over and above the claims that are not to be satisfied directly from the pool's resources;

(7) Establish the amount, if any, of aggregate excess insurance coverage to be purchased and maintained in the event that the pool's resources are exhausted in a given fiscal period; and

(8) Establish guidelines for membership in the pool, including the amount of money to be collected from each pool member to form and fund the pool.

(c) The board of trustees may not:

(1) Extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the Commissioner; or

(2) Borrow any monies from the pool or in the name of the pool, except in the ordinary course of business, without first advising the Commissioner of the nature and purpose of the loan and obtaining prior approval from the Commissioner.

(d) A contract or agreement made pursuant to this section must contain provisions:

(1) For a system or program of loss control;
(2) For termination of membership including both:
  a. Cancellation of individual membership in the pool by the pool; and
  b. Election by an individual member of the pool to terminate its participation;
(3) That a pool or a terminating member must provide at least 90 days' written notice of cancellation or termination;
(4) Requiring the pool to pay all claims for which each member incurs liability during each member's period of membership, except:
  a. Where a member has individually retained the risk;
  b. Where the risk is not covered; or
  c. For amounts of claims above the coverage provided by the pool;
(5) For the maintenance of claim reserves equal to known incurred losses and loss adjustment expenses and to an estimate of incurred but not reported losses;
(6) For compliance with any applicable federal requirements regarding financial responsibility for underground storage tanks;
(7) For a final accounting and settlement of the obligations of or refunds to a terminating member to occur when all incurred claims are concluded, settled, or paid;
(8) That the pool may establish offices where necessary in this State and employ necessary staff to carry out the purposes of the pool;
(9) That the pool may retain legal counsel, actuaries, claims adjusters, auditors, engineers, private consultants, and advisors, and other persons as the board of trustees or the administrator deems to be necessary;
(10) That the pool may make and alter bylaws and rules pertaining to the exercise of its purpose and powers;
(11) That the pool may purchase, lease, or rent real and personal property it deems to be necessary; and
(12) That the pool may enter into financial services agreements with financial institutions and that it may issue checks in its own name.

(e) In the event that either the pool or an individual pool member gives notice of an intent to cancel or terminate participation in the pool as provided by subdivision (4) of subsection (d) of this section, the pool shall so notify both the Commissioner and the Secretary within five business days of the issuance or receipt of such notice by the pool. In addition, the pool shall notify both the Commissioner and the Secretary within five business days of the date such cancellation or termination becomes effective, unless notice of cancellation or termination is rescinded.

(f) The formation and operation of an insurance pool under this section shall be subject to approval by the Commissioner who shall, after notice and hearing, establish reasonable requirements and rules for the approval and monitoring of such pools, including prior approval of pool administrators and provisions for periodic examinations of financial condition. The Commissioner may disapprove an application for the formation of an insurance pool, and may suspend or withdraw such approval whenever he finds that such applicant or pool:

(1) Has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the Commissioner or his representative;

(2) Has refused, or its officers, agents, or administrators have refused, to furnish satisfactory evidence of its financial and business standing or solvency;

(3) Is insolvent, or is in such condition that its further transaction of business in this State is hazardous to its members and creditors in this State and to the public;

(4) Has refused or neglected to pay a valid final judgment against it within 60 days after its rendition;

(5) Has violated any law of this State or has violated or exceeded the powers granted by its members;

(6) Has failed to pay any taxes, fees, or charges imposed in this State within 60 days after they are due and payable, or within 60 days after final disposition or any legal contest with respect to liability therefor; or

(7) Has been found insolvent by a court of any other state, by the insurance regulator or other proper officer or agency of any other state, and has been prohibited from doing business in such state.

(g) Each pool shall be audited annually at the expense of the pool by a certified public accounting firm, with a copy of the report available to the governing body or chief executive officer of each member of the pool and to the Commissioner. The board of trustees of the pool shall obtain an appropriate actuarial evaluation of the loss and loss adjustment expense reserves of the pool, including an estimate of losses and loss adjustment expenses incurred but not reported. The provisions of G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, and 58-6-5 apply to each pool and to persons that administer the pools. Annual financial statements required by G.S. 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal year. All financial statements required by this section shall be prepared in accordance with generally accepted statutory accounting principles.

(h) If, as a result of the annual audit or an examination by the Commissioner, it appears that the assets of a pool are insufficient to enable the pool to discharge its legal liabilities and other obligations, the Commissioner shall notify the administrator and the board of trustees of the pool of the deficiency and his list of recommendations to abate the deficiency, including a recommendation not to add any new members until the deficiency is abated. If the pool fails to comply with the recommendations within 30 days after the date of the notice, the Commissioner may apply to the Superior Court of Wake County for an order requiring the pool to abate the deficiency and authorizing the Commissioner to appoint one or more special deputy commissioners, counsel, clerks, or assistants to oversee the implementation of the Court's order. The Commissioner has all of the powers granted to him under Article 17A of General Statute Chapter 58 relating to rehabilitation and liquidation of insurers; and the provisions of that Article apply to this section to the extent they are not in conflict with this section. The compensation and expenses of such persons shall be fixed by the Commissioner, subject to the approval of the Court, and shall be paid out of the funds or assets of the pool.

(i) Each pool contract shall provide that the members of the pool shall be assessed on a pro rata basis as calculated by the amount of each member's average annual contribution in order to satisfy the amount of any deficiency where a pool is determined to be insolvent, financially impaired, or is otherwise found to be unable to discharge its legal liabilities and other obligations.

(j) In the event that the Commissioner finds that a pool is insolvent, financially impaired, or otherwise, unable to discharge its legal liabilities or obligations, or if the Commissioner at any time has reason to believe that any owner or operator is unable to demonstrate financial responsibility as required by G.S. 143-215.94H and rules adopted by the Commission as a result of the financial condition of the pool or for any other reason, the Commissioner shall so notify the Secretary.

(k) The provisions of Article 48 of Chapter 58 do not apply to any risks retained by any pool. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 11; 1995, c. 193, s. 66.)

Editor's Note. — Session Laws 1995, c. 193, s. 67 contains a severability clause.

Effect of Amendments. — The 1995 amendment, effective June 7, 1995, in subsection (g) substituted "G.S. 58-2-131, 58-2-132, 58-2-133" for "G.S. 58-2-130" and made a stylistic change.

§ 143-215.94K. Enforcement.

The provisions of G.S. 143-215.94W through G.S. 143-215.94Y shall apply to this Part. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1993, c. 400, s. 15; 1995, c. 377, s. 10.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to offenses occurring or continuing on or after that date, substituted "Enforcement" for "Penalties" in the catchline of this section, and rewrote the text of this section.

§ 143-215.94N. Applicability.

(a) The provisions of this Part as they relate to costs paid from the Commercial Fund apply only to discharges or releases that are discovered or reported on or after 30 June 1988 from a commercial underground storage tank.

(b) The provisions of this Part as they relate to costs paid from the Noncommercial Fund apply to discharges or releases without regard to the date discovered or reported; however, reimbursement of costs under G.S. 143-215.94G(d)(1), (2), (3), (3a), and (4) shall be for the full amount of the costs paid for from the Noncommercial Fund and shall not be limited pursuant to G.S. 143-215.94E(b) for discharges or releases from commercial underground storage tanks discovered or reported on or before 30 June 1988. (1989, c. 652, s. 13; 1993, c. 400, s. 15; 1995, c. 377, s. 11.)

Editor's Note. — Session Laws 1995, c. 377, s. 17, provides that the amendments by Session Laws 1995, c. 377, s. 11, to this section are applicable to any pending claim for reimbursement, and retroactively to any discharge or release that was discovered or reported on or after June 30, 1988.

Effect of Amendments. — The 1995 amendment, effective July 5, 1995, added "from a commercial underground storage tank" in subsection (a); in subsection (b) substituted "reimbursement of costs under" for "costs sought pursuant to", and inserted "(3a)"; and made stylistic changes. For the effective date of these amendments, see Editor's note.

Part 2B. Underground Storage Tank Regulation.

§ 143-215.94U. (Effective July 1, 1996) Registration of petroleum commercial underground storage tanks; operation of petroleum underground storage tanks; operating permit required.

(a) The owner or operator of each petroleum commercial underground storage tank shall annually obtain an operating permit from the Department for the facility at which the tank is located. The Department shall issue an operating permit only if the owner or operator:

(1) Has notified the Department of the existence of all tanks as required by 40 Code of Federal Regulations § 280.22 (1 July 1994 Edition) or 42 U.S.C. § 6991a, if applicable, at the facility;

(2) Has paid all fees required under G.S. 143-215.94C for all commercial petroleum underground storage tanks located at the facility;

(3) Complies with applicable release detection requirements set out in rules adopted pursuant to this Chapter, notifies the Department of the method or combination of methods of leak detection in use, and certifies to the Department that all applicable release detection requirements are being met for all petroleum underground storage tanks located at the facility;

(4) If applicable, complies with the Stage I vapor control requirements set out in 15A North Carolina Administrative Code 2D.0928, effective 1 March 1991, notifies the Department of the method or combination of methods of vapor control in use, and certifies to the Department that all Stage I vapor control requirements are being met for all petroleum underground storage tanks located at the facility; and

(5) Has substantially complied with the air quality, groundwater quality, and underground storage tank standards applicable to any activity in which the applicant has previously engaged and has been in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. In determining substantial compliance, the compliance history of the owner or operator and any parent, subsidiary, or other affiliate of the owner, operator, or parent may be considered.

(b) The operating permit shall be issued at the time the commercial underground storage annual tank operating fee required under G.S. 143-215.94C(a) is paid and shall be valid from the first day of

§ 143-215.94U has a delayed effective date. See notes.

the month in which the fee is due through the last day of the last month for which the fee is paid in accordance with the schedule established by the Department under G.S. 143-215.94C(b).

(c) No person shall place a petroleum product, and no owner or operator shall cause a petroleum product to be placed, into an underground storage tank at a facility for which the owner or operator does not hold a currently valid operating permit.

(d) The Department shall issue an operating permit certificate for each facility that meets the requirements of subsection (a) of this section. The operating permit certificate shall identify the number of tanks at the facility and shall conspicuously display the date on which the permit expires. Except for the owner or operator, no person shall be liable under subsection (c) of this section if an unexpired operating permit certificate is displayed at the facility, unless the person knows or has reason to know that the owner or operator does not hold a currently valid operating permit for the facility.

(e) The Department may revoke an operating permit only if the owner or operator fails to continuously meet the requirements set out in subdivisions (1) through (4) of subsection (a) of this section. If the Department revokes an operating permit, the owner or operator of the facility for which the operating permit was issued shall immediately surrender the operating permit certificate to the Department, unless the revocation is stayed pursuant to G.S. 150B-33. An owner or operator may challenge a decision by the Department to deny or revoke an operating permit by filing a contested case under Article 3 of Chapter 150B of the General Statutes. The Secretary shall make the final agency decision regarding the revocation of a permit under this section. (1995, c. 377, s. 2.)

Editor's Note. — Session Laws 1995, c. 377, s. 17, made this section effective July 1, 1996.

Session Laws 1995, c. 377, s. 14, provides for the Department of Environment, Health and Natural Resources to begin issuing operating permits and operating permit certificates required under this section not later than January 1, 1996, and to issue operating permits to every facility meeting the requirements of subsection (a) by July 1, 1996.

Session Laws 1995, c. 377, s. 15(d), provides for the Department of Environment, Health and Natural Resources to report its findings regarding the extent to which abandoned petroleum underground storage tanks pose a risk to human health or the environment, and to make recommendations to the Environmental Review Commission by January 1, 1997.

§ 143-215.94V. Standards for petroleum underground storage tank cleanup.

(a) Legislative findings and intent.

(1) The General Assembly finds that:

a. The goals of the underground storage tank program are to protect human health and the environment. Maintaining the solvency of the Commercial Fund and the Noncommercial Fund is essential to these goals.

b. The sites at which discharges or releases from underground storage tanks occur vary greatly in terms of complexity, soil types, hydrogeology, other physical and chemical characteristics, current and potential future uses of groundwater, and the degree of risk that each site may pose to human health and the environment.

c. Risk-based corrective action is a process that recognizes this diversity and utilizes an approach where assessment and remediation activities are specifically tailored to the conditions and risks of a specific site.

d. Risk-based corrective action gives the State flexibility in requiring different levels of cleanup based on scientific analysis of different site characteristics, and allowing no action or no further action at sites that pose little risk to human health or the environment.

e. A risk-based approach to the cleanup of environmental damage can adequately protect human health and the environment while preventing excessive or unproductive cleanup efforts, thereby assuring that limited resources are directed toward those sites that pose the greatest risk to human health and the environment.

(2) The General Assembly intends:

a. To direct the Commission to adopt rules that will provide for risk-based assessment and cleanup of discharges and releases from petroleum underground storage tanks. These rules are intended to combine groundwater standards that protect current and potential future uses of groundwater with risk-based analysis to determine the appropriate cleanup levels and actions.

b. That these rules apply to all discharges or releases that are reported on or after the date the rules become effective in order to ascertain whether cleanup is necessary, and if so, the appropriate level of cleanup.

c. That these rules may be applied to any discharge or release that has been reported at the time the rules become effective at the discretion of the Commission.

d. That these rules and decisions of the Commission and the Department in implementing these rules facilitate the completion of more cleanups in a shorter period of time.

e. That neither the Commercial Fund nor the Noncommercial Fund be used to clean up sites where the Commission has determined that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission.

f. That until rules implementing a risk-based approach to assessment and cleanup are adopted, the Commission implement the foregoing principles to the maximum extent possible under existing rules.

(b) The Commission shall adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases from petroleum underground storage tanks. The rules shall address, at a minimum, the circumstances where site-specific information should be considered, criteria for determining acceptable cleanup levels, and the acceptable level or range of levels of risk to human health and the environment.

(c) The Commission may require an owner or operator or a landowner eligible for reimbursement under G.S. 143-215.94E(b1) to determine the degree of risk to human health and the environment that is posed by a discharge or release from a petroleum underground storage tank.

(d) If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission, the Commission shall notify the owner, operator, or landowner who makes the determination required by subsection (c) of this section that no cleanup, further cleanup, or further action will be required unless the Commission later determines that the discharge or release poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment.

(e) If the Commission concludes under subsection (d) of this section that no cleanup, no further cleanup, or no further action will be required, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under this Article from either the Commercial or Noncommercial Fund, other than reasonable and necessary to conduct the risk assessment required by this section, unless:

(1) Cleanup is ordered or damages are awarded in a finally adjudicated judgment in an action against the owner or landowner.

(2) Cleanup is required or damages are agreed to in a consent judgment approved by the Department prior to its entry by the court.

(3) Cleanup is required or damages are agreed to in a settlement agreement approved by the Department prior to its execution by the parties.

(4) The payment or reimbursement is for costs that were incurred prior to or as a result of notification of a determination by the Commission that no cleanup, no further cleanup, or no action is required.

(5) The payment or reimbursement is for costs that were incurred as a result of a later determination by the Commission that the discharge or release poses a threat or potential threat to human health or the environment as provided in subsection (d) of this section.

(f) This section shall not be construed to limit the authority of the Commission to require investigation, initial response, and abatement of a discharge or release pending a determination by the Commission under subsection (d) of this section as to whether cleanup, further cleanup, or further action will be required.

(g) Subsections (c) through (e) of this section apply only to assessments and cleanups in progress or begun on or after the date on which the rules adopted by the Commission pursuant to subsection (b) of this section become effective. (1995, c. 377, s. 1.)

Editor's Note. — Session Laws 1995, c. 377, s. 17, made this section effective upon ratification. The Act was ratified July 5, 1995.

Session Laws 1995, c. 377, s. 15(d), provides for the Department of Environment, Health and Natural Resources to report its findings regarding the extent to which abandoned petroleum underground storage tanks pose a risk to human health or the environment, and to make recommendations to the Environmental Review Commission by January 1, 1997.

Session Laws 1995, c. 377, s. 16, provides that this section constitutes a recent act within the meaning of G.S. 150B-21.1(a)(2), that the provisions of G.S. 150B-21.1(b) shall not apply to temporary rules adopted to implement this section, and that the temporary rules may remain in effect until the adoption of permanent rules by the Environmental Management Commission, notwithstanding G.S. 150B-21.1(d).

§ 143-215.94W. Enforcement procedures: civil penalties.

(a) A civil penalty of not more than ten thousand dollars ($10,000) may be assessed by the Secretary against any person who:

(1) Violates any provision of this Part or rule adopted pursuant to this Part.
(2) Fails to apply for or to secure a permit required by this Part.
(3) Violates or fails to act in accordance with the terms, conditions, or requirements of any permit issued pursuant to this Part.
(4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Part.
(5) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.
(6) Falsifies or tampers with any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.
(7) Knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.
(8) Knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Part or a rule implementing this Part.
(9) Knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under this Part.
(10) Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Part.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed ten thousand dollars ($10,000) per day for so long as the violation continues. A penalty for a continuous violation shall not exceed two hundred thousand dollars ($200,000) for each period of 30 days during which the violation continues.

(c) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. The Secretary shall make the final decision regarding assessment of a civil penalty under this section.

(e) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (d) of this section, or requests remission of the assessment in whole or in part as provided in subsection (e) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(g) The Secretary may delegate his powers and duties under this section to the Director of the Division of Environmental Management of the Department. (1995, c. 377, s. 3.)

Editor's Note. — Session Laws 1995, c. 377, s. 17, provides that this section is effective January 1, 1996, and is applicable to offenses occurring or continuing on or after that date.

Session Laws 1995, c. 377, s. 15(d), provides for the Department of Environment, Health and Natural Resources to report its findings regarding the extent to which abandoned petroleum underground storage tanks pose a risk to human health or the environment, and to make recommendations to the Environmental Review Commission by January 1, 1997.

§ 143-215.94X. Enforcement procedures: criminal penalties.

(a) Any person who negligently commits any of the offenses set out in subdivisions (1) through (9) of G.S. 143-215.94W(a) shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues.

(b) Any person who knowingly and willfully commits any of the offenses set out in subdivisions (1) through (5) of G.S. 143-215.94W(a) shall be guilty of a Class I felony, which may include a fine not to exceed one hundred thousand dollars ($100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars ($500,000) for each period of 30 days during which a violation continues. For the purposes of this subsection, the phrase "knowingly and willfully" shall mean intentionally and consciously as the courts of this State, according to the principles of common law interpret the phrase in the light of reason and experience.

(c)(1) Any person who knowingly commits any of the offenses set out in subdivisions (1) through (5) of G.S. 143-215.94W(a) and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a Class C felony, which may include a fine not to exceed two hundred fifty thousand dollars ($250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars ($1,000,000) for each period of 30 days during which a violation continues.

(2) For the purposes of this subsection, a person's state of mind is knowing with respect to:

a. His conduct, if he is aware of the nature of his conduct;

b. An existing circumstance, if he is aware or believes that the circumstance exists; or

c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(3) Under this subsection, in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:

a. The person is responsible only for actual awareness or actual belief that he possessed; and

b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

(4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

(d) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.

(e) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.

(f) For the purposes of the felony provisions of this section, a person's state of mind shall not be found "knowingly and willfully" or "knowingly" if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:

(1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.

(2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.

(3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.

(4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.

(5) Violations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.

(6) Occasional, inadvertent, short-term violations causing no significant harm to the environment or risk to the public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

(g) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under State criminal offenses may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience. (1995, c. 377, s. 3.)

Editor's Note. — Session Laws 1995, c. 377, s. 17, provides that this section is effective January 1, 1996, and is applicable to offenses occurring or continuing on or after that date.

Session Laws 1995, c. 377, s. 15(d), provides for the Department of Environment, Health and Natural Resources to report its findings regarding the extent to which abandoned petroleum underground storage tanks pose a risk to human health or the environment, and to make recommendations to the Environmental Review Commission by January 1, 1997.

§ 143-215.94Y. Enforcement procedures; injunctive relief.

Whenever the Department has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Part, any of the terms of any permit issued pursuant to this Part, or a rule implementing this Part, the Department may, either before or after the institution of any other action or proceeding authorized by this Part, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Part or the regulations of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Part. (1995, c. 377, s. 3.)

Editor's Note. — Session Laws 1995, c. 377, s. 15(d), provides for the Department of Environment, Health and Natural Resources to report its findings regarding the extent to which abandoned petroleum underground storage tanks pose a risk to human health or the environment, and to make recommendations to the Environmental Review Commission by January 1, 1997.

Session Laws 1995, c. 377, s. 17, provides that this section is effective January 1, 1996, and is applicable to offenses occurring or continuing on or after that date.

§ 143-215.94Z: Reserved for future codification purposes.

Part 3. Oil Terminal Facilities.

§ 143-215.96. Oil terminal facility registration.

(a) The owner or operator of every oil terminal facility in the State shall secure a registration certificate from the Secretary. The Secretary shall not issue a registration certificate until the owner or operator has furnished the following information:

(1) Complete name of the owner and operator of the oil terminal facility together with addresses and telephone numbers;

(2) Number of employees of the oil terminal facility and the principal officers;

(3) Maps or sketches, based on criteria developed by the Secretary, showing property lines of the oil terminal facility and location of nearby watercourses or bodies of water as specified by the Secretary; and

(4) Summary of present and proposed procedures, if any, for prevention of oil spills.

(b) The owner or operator of an oil terminal facility shall secure a registration certificate no later than 30 days after the oil terminal facility begins operation. (1973, c. 534, s. 1; 1995, c. 504, s. 11.)

Effect of Amendments. — The 1995 amendment, effective July 28, 1995, added the subsection (a) and (b) designations; rewrote the introductory language of subsection (a); added "the" preceding "owner" in subdivision (a)(1); substituted "Secretary, showing" for "Secretary of Natural and Economic Resources to show" in subdivision (a)(3); and in subsection (b) substituted "an" for "any" following "operator of", deleted "which begins operation subsequent to the initial registration date specified in this section" preceding "shall secure", and substituted "the oil terminal facility begins operation" for "beginning operations".

§ 143-215.98. Violations.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 4. Oil Refining Facility Permits.

§ 143-215.102. Penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 21B.

Air Pollution Control.

§ 143-215.105. Declaration of policy; definitions.

CASE NOTES

Appeal. — Third party was entitled under the North Carolina Administrative Procedures Act, §§ 150B-1 to 150B-53 (1991), and the Air Pollution Control Act, and this section to § 143-215.114C (1993), to appeal to the Office of Administrative Hearings from the decision of the Department of Environmental Management, to grant an air pollution control permit to Duke Power Company. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 337 N.C. 569, 447 S.E.2d 768 (1994).

§ 143-215.107. Air quality standards and classifications.

(a) Duty to Adopt Plans, Standards, etc. — The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

(1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.

(2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.

(3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in

order to promote the policies and purposes of this Article and Article 21 most effectively.

(4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(5) To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards. The standards may be applied uniformly to the State as a whole or to any area of the State designated by the Commission. This subdivision does not apply to that portion of the National Emission Standards for Hazardous Air Pollutants for asbestos that governs demolition and renovation as set out in 40 C.F.R. § 61.141, 61.145, 61.150, and 61.154 (1 July 1993 edition).

(6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations.

(7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas.

(8) To develop and adopt standards and plans necessary to implement programs to control acid deposition and to regulate the use of sulfur dioxide allowances and nitrogen oxides emissions in accordance with Title IV and implementing regulations adopted by the United States Environmental Protection Agency.

(9) To regulate the oxygen content of gasoline, to require use of reformulated gasoline as the Commission determines necessary, to implement the requirements of Title II and implementing regulations adopted by the United States Environmental Protection Agency, and to develop standards and plans to implement this subdivision. Rules adopted under this subdivision may specify standards for a particular area of the State that differ from standards specified for other areas as may be necessary to improve ambient air quality within a particular area, achieve attainment or preclude violations of the National Ambient Air Quality Standards, or to meet other federal requirements. Rules may authorize the use of marketable oxygen credits for gasoline as provided in federal requirements.

(10) To develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency.

(b) Criteria for Standards. — In developing air quality and emission control standards, the Commission shall recognize varying local conditions and requirements and may prescribe different standards for different areas as may be necessary and appropriate to facilitate accomplishment of the stated purposes of this Article and Article 21.

(c) Chapter 150B of the General Statutes governs the adoption and publication of rules under this Article.

(d), (e) Repealed by Session Laws 1987, c. 827, s. 205.

(f), (g). Repealed by Session Laws 1995, c. 507, s. 27, effective December 1, 1995. (1973, c. 821, s. 6; c. 1262, s. 23; 1975, c. 784; 1979, c. 545, s. 1; c. 931; 1987, c. 827, ss. 154, 205; 1989, c. 132; c. 168, s. 48; 1991, c. 403, s. 3; c. 552, s. 9; c. 761, s. 40; 1991 (Reg. Sess., 1992), c. 889, s. 3; 1993, c. 400, s. 7; 1993 (Reg. Sess., 1994), c. 686, s. 6; 1995, c. 123, s. 9; c. 507, s. 27.8(s).)

Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1995, c. 507, which amended this section, in s. 27.8(z) provides that the amendment is effective December 1, 1995, and is applicable to all rules for which a notice of rule making is published in the North Carolina Register on or after that date and to rule and Building Code changes that are initiated on or after that date and that are not subject to the rule-making procedures set out in Article 2A of Chapter 150B of the General Statutes.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provision of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 fiscal biennium."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and applicable to violations occurring on or after that date, in subdivision (a)(5) deleted "such" preceding "emission control," substituted "abate," for "abate", substituted "The" for "Such" in the second sentence, and added the last sentence.

Session Laws 1995, c. 123, s. 9, effective May 30, 1995, substituted the current last sentence of subdivision (a)(5) for the former last sentence, which read "This subdivision does not apply to asbestos NESHAP for renovations and demolitions, defined in G.S. 130A-444, that are subject to regulation by the Commission for Health Services under Article 19 of Chapter 130 A of the General Statutes."

Session Laws 1995, c. 507, s. 27.8(s), effective December 1, 1995, repealed subsections (f) and (g). For applicability, see Editor's note.

§ 143-215.108. Control of sources of air pollution; permits required.

(a) After the effective date applicable to any air quality or emission control standards established pursuant to G.S. 143-215.107 and except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities which contravene or will be likely to contravene such standards until or unless such person shall have applied for and shall have received from the Commission a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

(1) Establish or operate any air contaminant source;

(2) Build, erect, use or operate any equipment which may result in the emission of air contaminants or which is likely to cause air pollution;

(3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted;

(4) Enter into an irrevocable contract for the construction and installation of any air-cleaning device, or allow or cause such device to be constructed, installed, or operated.

(a1) The Commission may by rule establish procedures that meet the requirements of section 502(b)(10) of Title V (42 U.S.C. § 7661a(b)(10)) and 40 Code of Federal Regulations § 70.4(b)(12) (1 July 1993 Edition) to allow a permittee to make changes within a permitted facility without requiring a revision of the permit.

(a2) The Commission may adopt rules that provide for a minor modification of a permit. At a minimum, rules that provide for a minor modification of a permit shall meet the requirements of 40 Code of Federal Regulations § 70.7(e)(2) (1 July 1993 Edition). If the Commission adopts rules that provide for a minor modification of a permit, a permittee shall not make a change in the permitted facility while the application for the minor modification is under review unless the change is authorized under the rules adopted by the Commission.

(b) The Commission shall act upon all applications for permits so as to effectuate the purpose of this section, by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air from any additional or enlarged sources.

(c) The Commission shall have the power:

(1) To grant and renew a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this section or the requirements of the Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency;

(2) To grant and renew any temporary permit for such period of time as the Commission shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;

(3) To terminate, modify, or revoke and reissue any permit upon not less than 60 days' written notice to any person affected;

(3a) To suspend any permit pursuant to the provisions of G.S. 150B-3(c);

(4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;

(5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit;

(5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and

b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.

As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations 240.12b-2 (1 April 1990 Edition);

(6) To adopt rules, as it deems necessary, establishing the form of applications and permits and procedures for the granting or denial of permits and renewals pursuant to this section; and all permits, renewals and denials shall be in writing;

(7) To prohibit any stationary source within the State from emitting any air pollutant in amounts that will prevent attainment or maintenance by any other state of any national ambient air quality standard or that will interfere with measures required to be included in the applicable implementation plan for any other state to prevent deterioration of air quality or protect visibility; and

(8) To designate certain classes of activities for which a general permit may be issued, after considering the environmental impact of an activity, the frequency of the activity, the need for individual permit oversight, and the need for public review and comment on individual permits.

(d)(1) The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. A permit application may not be deemed complete unless it is accompanied by a copy of the request for determination as provided in subsection (f) of this section that bears a date of receipt entered by the clerk of the local government and until the 15-day period for issuance of a determination has elapsed.

(2) The Commission shall adopt rules specifying the times within which it must act upon applications for permits required by Title V and other permits required by this section. The times specified shall be extended for the period during which the Commission is prohibited from issuing a permit under subdivisions (3) and (4) of this subsection. The Commission shall inform a permit applicant as to whether or not the application is complete within the time specified in the rules for action on the application. If the Commission fails to act on an application for a permit required by Title V or this section within the time period specified, the failure to act on the application constitutes a final agency decision to deny the permit. A permit applicant, permittee, or other person aggrieved, as defined in G.S. 150B-2, may seek judicial review of a failure to act on the application as provided in G.S. 143-215.5 and Article 4 of Chapter 150B of the General Statutes. Notwithstanding the provisions of G.S. 150B-51, upon review of a failure to act on an application for a permit required by Title V or this section, a court may either: (i) affirm the denial of the permit or (ii) remand the application to the Commission for action upon the application within a specified time.

(3) If the Administrator of the United States Environmental Protection Agency validly objects to the issuance of a permit required by Title V within 45 days after the Administrator receives the proposed permit and the required portions of the permit application, the Commission shall not issue the

permit until the Commission revises the proposed permit to meet all objections noted by the Administrator or otherwise satisfies all objections consistent with Title V and implementing regulations adopted by the United States Environmental Protection Agency.

(4) If the Administrator of the United States Environmental Protection Agency validly objects to the issuance of a permit required by Title V after the expiration of the 45-day review period specified in subdivision (3) of this subsection as a result of a petition filed pursuant to section 505(b)(2) of Title V (42 U.S.C. § 7661d(b)(2)) and prior to the issuance of the permit by the Commission, the Commission shall not issue the permit until the Commission revises the proposed permit to meet all objections noted by the Administrator or otherwise satisfies all objections consistent with Title V and implementing regulations adopted by the United States Environmental Protection Agency.

(d1) No permit issued pursuant to this section shall be issued or renewed for a term exceeding five years.

(e) A permit applicant or permittee who is dissatisfied with a decision of the Commission may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit applicant or permittee does not file a petition within the required time, the Commission's decision on the application is final and is not subject to review.

(f) An applicant for a permit under this section for a new facility or for the expansion of a facility permitted under this section shall request each local government having jurisdiction over any part of the land on which the facility and its appurtenances are to be located to issue a determination as to whether the local government has in effect a zoning or subdivision ordinance applicable to the facility and whether the proposed facility would be consistent with the ordinance. The request to the local government shall be accompanied by a copy of the draft permit application and shall be delivered to the clerk of the local government personally or by certified mail. The determination shall be verified or supported by affidavit signed by the official designated by the local government to make the determination and, if the local government states that the facility is inconsistent with a zoning or subdivision ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of any such determination shall be provided to the applicant when it is submitted to the Commission. The Commission shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant. Unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the proposed facility is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the facility under the permit, comply with all lawfully adopted local ordinances, including those cited in the determination, that apply to the facility at the time of construction or operation of the facility. If a local government fails to submit a determination to the Commission as provided by this subsection within 15 days after receipt of the request, the Commission may proceed to consider the permit application without regard to local zoning and subdivision ordinances. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

(g) Any person who is required to hold a permit under this section shall submit to the Department a written description of his current and projected plans to reduce the emission of air contaminants under such permit by source reduction or recycling. The written description shall accompany the payment of the annual permit fee. The written description shall also accompany any application for a new permit, or for modification of an existing permit, under this section. The written description required by this subsection shall not be considered part of a permit application and shall not serve as the basis for the denial of a permit or permit modification.

(h) Expedited Review of Applications Certified by a Professional Engineer. — The Commission shall adopt rules governing the submittal of permit applications certified by a professional engineer, including draft permits, that can be sent to public notice and hearing upon receipt and subjected to technical review by personnel within the Department. These rules shall specify, at a minimum, any forms to be used; a checklist for applicants that lists all items of information required to prepare a complete permit application; the form of the certification required on the application by a professional engineer; and the information that must be included in the draft permit. The Department shall process an application that is certified by a professional engineer as provided in subdivisions (1) through (7) of this subsection.

(1) Initiation of Review. Upon receipt of an application certified by a professional engineer in accordance with this subsection and the rules adopted pursuant to this subsection, the Department shall determine whether the application is complete as provided in subdivision (2) of this subsection. Within 30 days after the date on which an application is determined to be complete, the Department shall:
   a. Publish any required notices, using the draft permit included with the application;
   b. Schedule any required public meetings or hearings on the application and permit; and
   c. Initiate any and all technical review of the application in a manner to ensure substantial completion of the technical review by the time of any public hearing on the application, or if there is no hearing, by the close of the notice period.

(2) Completeness Review. Within 10 working days of receipt of the permit application certified by a professional engineer under this subsection, the Department shall determine whether the application is complete for purposes of this subsection. The Department shall determine whether the permit application certified by a professional engineer is complete by comparing the information provided in the application with the checklist contained in the rules adopted by the Commission pursuant to this subsection.

a. If the application is not complete, the Department shall promptly notify the applicant in writing of all deficiencies of the application, specifying the items that need to be included, modified, or supplemented in order to make the application complete, and the 10-day time period is suspended after this request for further information. If the applicant submits the requested information within the time specified, the 10-day time period shall begin again on the day the additional information was submitted. If the additional information is not submitted within the time periods specified, the Department shall return the application to the applicant, and the applicant may treat the return of the application as a denial of the application or may resubmit the application at a later time.

b. If the Department fails to notify the applicant that an application is not complete within the time period set forth in this subsection, the application shall be deemed to be complete.

(3) Time for Permit Decision. For any application found to be complete under subdivision (2) of this subsection, the Department shall issue a permit decision within 30 days of the last day of any public hearing on the application, or if there is no hearing, within 30 days of the close of the notice period.

(4) Rights if Permit Decision Not Made in Timely Fashion. If the Department fails to issue a permit decision within the time periods specified in subdivision (3) of this subsection, the applicant may take any of the following actions:

a. Take no action, thereby consenting to the continued review of the application; or

b. Treat the action as a denial of the application and appeal the denial under Article 3 of Chapter 150B of the General Statutes.

(5) Power to Halt Review. At any time after the permit application certified by a professional engineer has been determined to be complete under subdivision (2) of this subsection, the Department may immediately terminate review of that application, including technical review and any hearings or meetings scheduled on the application, upon a determination of one of the following:

a. The permit application is not in substantial compliance with the applicable rules; or

b. The applicant failed to pay all permit application fees.

(6) Rights if Review Halted. If the Department terminates review of an application under subdivision (5) of this subsection, the applicant may take any of the following actions:

a. Revise and resubmit the application; or

b. Treat the action as a denial of the application and appeal the denial under Article 3 of Chapter 150B of the General Statutes.

(7) Option; No Additional Fee. The submittal of a permit application certified by a professional engineer to be considered under this subsection shall be an option and shall not be required of any applicant. The Department shall not

impose any additional fees for the receipt or processing of a permit application certified by a professional engineer.

(i) Rules for Review of Applications Other Than Those Certified by a Professional Engineer. — The Commission shall adopt rules governing the times of review for all permit applications submitted pursuant to this section other than those certified by a professional engineer pursuant to subsection (h) of this section. Those rules shall specify maximum times for, among other things, the following actions in reviewing the permit applications covered by this subsection:

(1) Determining that the permit application is complete;
(2) Requesting additional information to determine completeness;
(3) Determining that additional information is needed to conduct a technical review of the application;
(4) Completing all technical review of the permit application;
(5) Holding and completing all public meetings and hearings required for the application;
(6) Completing the record from reviewing and acting on the application; and
(7) Taking final action on the permit, including granting or denying the application. (1973, c. 821, s. 6; c. 1262, s. 23; 1979, c. 545, ss. 2, 3; 1987, c. 461, s. 2; c. 827, ss. 154, 206; 1989, c. 168, s. 30; c. 492; 1989 (Reg. Sess., 1990), c. 1037, s. 2; 1991, c. 552, s. 5; c. 629, s. 1; c. 761, s. 27(a)-(c); 1993, c. 400, s. 8; 1995, c. 484, s. 2.)

Editor's Note. —

Session Laws 1995, c. 484, which added subsections (h) and (i), in s. 1 provides that the General Assembly finds that the increasing complexity of environmental laws and rules have made the environmental permitting process increasingly lengthy and there are instances where it would be appropriate to ensure the expeditious processing of applications that meet additional standards.

Session Laws 1995, c. 484, which added subsections (h) and (i), in s. 3 provides that the rules to be adopted pursuant to those subsections shall be initiated as soon as possible, with the goal of making the permanent rules effective no later than 18 months after July 26, 1995.

Session Laws 1995, c. 484, which added subsections (h) and (i), in s. 4 provides for the Department to report to the Environmental Review Commission by April 1, 1996, in order to evaluate the progress towards the implementation of the act.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to an application for a new permit, a modification of an existing permit, or a reissuance or renewal of an existing permit filed on or after that date, added subsections (h) and (i).

CASE NOTES

This section does not amend, repeal, or make exception to the North Carolina Administrative Procedure Act (NCAPA) so as to deprive petitioner of his right to an administrative hearing thereunder, thus petitioner was entitled to commence an administrative hearing to determine his right under the air pollution control act. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 337 N.C. 569, 447 S.E.2d 768 (1994), rehearing denied, 338 N.C. 1, 447 S.E.2d 768.

Timeliness of Challenge to Commission Decision. — Where power company did not file a petition challenging the decision of the Department of Environment, Health and Natural Resources (DEHNR) within 30 days after DEHNR notified it of the permitting decision, the permitting decision was final. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 112 N.C. App. 566, 436 S.E.2d

594 (1993), rev'd on other grounds, 337 N.C. 569, 447 S.E.2d 768 (1994).

§ 143-215.114B. Enforcement procedures: criminal penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 24.

Wildlife Resources Commission.

§ 143-240. Creation of Wildlife Resources Commission; districts; qualifications of members.

(a) There is hereby created the Wildlife Resources Commission of the Department of Environment, Health, and Natural Resources which shall consist of 17 citizens of North Carolina who shall be appointed as is provided in G.S. 143-241.

Each member of the Commission shall be an experienced hunter, fisherman, farmer, or biologist, who shall be generally informed on wildlife conservation and restoration problems.

Members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or G.S. 138-6 as the case may be, which shall be paid from fees collected by the Wildlife Resources Commission.

(b) There are established the following geographical wildlife districts:

First district to be composed of the following counties: Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Tyrrell, Washington.

Second district to be composed of the following counties: Beaufort, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Pitt.

Third district to be composed of the following counties: Edgecombe, Franklin, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wayne, Wilson.

Fourth district to be composed of the following counties: Bladen, Brunswick, Columbus, Cumberland, Harnett, Hoke, Robeson, Sampson, Scotland.

Fifth district to be composed of the following counties: Alamance, Caswell, Chatham, Durham, Granville, Guilford, Lee, Orange, Person, Randolph, Rockingham.

Sixth district to be composed of the following counties: Anson, Cabarrus, Davidson, Mecklenburg, Montgomery, Moore, Richmond, Rowan, Stanly, Union.

Seventh district to be composed of the following counties: Alexander, Alleghany, Ashe, Davie, Forsyth, Iredell, Stokes, Surry, Watauga, Wilkes, Yadkin.

Eighth district to be composed of the following counties: Avery, Burke, Caldwell, Catawba, Cleveland, Gaston, Lincoln, McDowell, Mitchell, Rutherford, Yancey.

Ninth district to be composed of the following counties: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Swain, Transylvania. (1947, c. 263, s. 4; 1961, c. 737, s. 11/2; 1965, c. 859, s. 2; 1971, c. 285; 1977, c. 771, s. 4; c. 906, s. 1; 1981 (Reg. Sess., 1982), c. 1191, s. 79; 1989, c. 68, s. 1; c. 727, s. 218(112); 1993 (Reg. Sess., 1994), c. 684, s. 13.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 5, 1994, substituted "17 citizens" for "13 citizens" in subsection (a).

§ 143-241. (Applicable until January 1, 1997) Appointment and terms of office of Commission members; filling of vacancies.

The members of the North Carolina Wildlife Resources Commission shall be appointed as follows:

The Governor shall appoint one member each from the first, fourth, and seventh wildlife districts to serve six-year terms;

The Governor shall appoint one member each from the second, fifth, and eighth wildlife districts to serve two-year terms;

The Governor shall appoint one member each from the third, sixth, and ninth wildlife districts to serve four-year terms;

The Governor shall also appoint two at-large members to serve four-year terms.

The General Assembly shall appoint six members of the Commission to serve two-year terms, three upon the recommendation of the Speaker of the House, one upon the recommendation of the President of the Senate, and two upon the recommendation of the President Pro Tempore of the Senate, in accordance with G.S. 120-121. Of the members appointed upon the recommendation of the Speaker of the House and upon the recommendation of the President Pro Tempore of the Senate, at least one of each shall be a member of the political party to which the largest minority of the members of the General Assembly belongs.

Thereafter as the terms of office of the members of the Commission appointed by the Governor from the several wildlife districts expire, their successors shall be appointed for terms of six years each. As the terms of office of the members of the Commission appointed by the General Assembly expire, their successors shall be appointed for terms of two years each. All members appointed by the Governor serve at the pleasure of the Governor that appointed them and they may be removed by that Governor at any time. A successor to the appointing Governor may remove a Commission member only for cause as provided in G.S. 143B-13. Members appointed by the General Assembly serve at the pleasure of that body and may be removed by law at any time. In the event that a Commission member is removed, the member appointed to replace the removed member shall serve only for the unexpired term of the removed member. (1947, c. 263, s. 5; 1961, c. 737, s. 1; 1965, c. 859, s. 3; 1973, c. 825, s. 2; 1977, c. 906, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 80; 1989, c. 68, s. 3; 1993 (Reg. Sess., 1994), c. 684, s. 14.)

§ 143-241 is set out twice. See notes.

Section Set Out Twice. — The section above is applicable until January 1, 1997. For the section as applicable January 1, 1997, see the following section, also numbered § 143-241.

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 684, which amended this section, in s. 15 provides: "The initial terms of office of the four new members of the Wildlife Resources Commission established in Sections 13 and 14 of this act shall expire on the same date in 1995 as the terms of the other members appointed by the General Assembly."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 5, 1994, in the sixth paragraph substituted "six members" for "two members," substituted "three upon the recommendation" for "one upon the recommendation," substituted "House" for "House and," inserted "and two upon the recommendation of the President Pro Tempore of the Senate," and added the last sentence of that paragraph.

§ 143-241. (Applicable January 1, 1997) Appointment and terms of office of Commission members; filling of vacancies.

The members of the North Carolina Wildlife Resources Commission shall be appointed as follows:

The Governor shall appoint one member each from the first, fourth, and seventh wildlife districts to serve six-year terms;

The Governor shall appoint one member each from the second, fifth, and eighth wildlife districts to serve two-year terms;

The Governor shall appoint one member each from the third, sixth, and ninth wildlife districts to serve four-year terms;

The Governor shall also appoint two at-large members to serve four-year terms.

The General Assembly shall appoint six members of the Commission to serve two-year terms, three upon the recommendation of the Speaker of the House, three upon the recommendation of the President Pro Tempore of the Senate, in accordance with G.S. 120-121. Of the members appointed upon the recommendation of the Speaker of the House and upon the recommendation of the President Pro Tempore of the Senate, at least one of each shall be a member of the political party to which the largest minority of the members of the General Assembly belongs.

Thereafter as the terms of office of the members of the Commission appointed by the Governor from the several wildlife districts expire, their successors shall be appointed for terms of six years each. As the terms of office of the members of the Commission appointed by the General Assembly expire, their successors shall be appointed for terms of two years each. All members appointed by the Governor serve at the pleasure of the Governor that appointed them and they may be removed by that Governor at any time. A successor to the appointing Governor may remove a Commission member only for cause as provided in G.S. 143B-13. Members appointed by the General Assembly serve at the pleasure of that body and may be removed by law at any time. In the event that a Commission member is removed, the member appointed to replace the removed member shall serve only for the unexpired term of the removed member. (1947, c. 263, s. 5; 1961, c. 737, s. 1; 1965, c. 859, s. 3; 1973, c. 825, s. 2; 1977, c. 906, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 80; 1989, c. 68, s. 3; 1993 (Reg. Sess., 1994), c. 684, s. 14; 1995, c. 490, s. 64.)

Section Set Out Twice. — The section above is applicable January 1, 1997. For the section as applicable until January 1, 1997, see the preceding section, also numbered § 143-241.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment, in the first sentence of the sixth paragraph, substituted "three" for "one" following "Speaker of the House", and deleted "President of the Senate, and two upon the recommendation of the" preceding "President Pro Tempore". For the applicability of this amendment, see Editor's note.

§ 143-247.2. Wildlife Conservation Account; emblems for those who donate to the Account.

(a) Account. — The Wildlife Conservation Account is established within the Wildlife Resources Fund and is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Revenue is credited to the Account from donations of income tax refunds, from other donations, and from revenue derived from the sale of wildlife resources license plates. The Commission may use revenue in the Account only for the following purposes:

(1) To manage, preserve, or protect wildlife species that are endangered, threatened, or of special concern and are included on the State's protected animal lists.

(2) To manage, preserve, or protect nongame wildlife species that are not on the State's protected animal lists.

(3) To administer and enforce nongame wildlife programs under the jurisdiction of the Commission.

(b) Emblems. — The Commission may issue and sell appropriate emblems by which to identify recipients of the emblems as contributors to the Wildlife Conservation Account. Emblems of different size, shape, type, or design may be used to recognize contributions in different amounts. The Commission may not issue an emblem for a contribution of less than five dollars ($5.00). (1975, c. 77; 1993, c. 257, s. 14; c. 543, s. 7; 1995, c. 509, s. 81.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, inserted "and" following "Wildlife Resources Fund" in subsection (a).

§ 143-250.1. Wildlife Endowment Fund.

(a) Recognizing the inestimable importance to the State and its people of conserving the wildlife resources of North Carolina, and for the purpose of providing the opportunity for citizens and residents of the State to invest in the future of its wildlife resources, there is created the North Carolina Wildlife Endowment Fund, the income and principal of which shall be used only for the purpose of supporting wildlife conservation programs of the State in accordance with this section. This fund shall also be known as the Eddie Bridges Fund.

(b) There is created the Board of Trustees of the Wildlife Endowment Fund of the Wildlife Resources Commission, with full authority over the administration of the Wildlife Endowment Fund, whose ex officio chairman, vice-chairman, and members shall be the chairman, vice-chairman, and members of the Wildlife Resources Commission. The State Treasurer shall be the custodian of the Wildlife Endowment Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3.

(c) The assets of the Wildlife Endowment Fund shall be derived from the following:

(1) The proceeds of any gifts, grants and contributions to the State which are specifically designated for inclusion in the fund;

(2) The proceeds from the sale of lifetime sportsman combination licenses issued pursuant to G.S. 113-270.1D;

(3) The proceeds from the sale of lifetime hunting and lifetime fishing licenses pursuant to G.S. 113-270.2(c)(2) and G.S. 113-271(d)(3);

(4) The proceeds of lifetime subscriptions to the magazine Wildlife in North Carolina at such rates as may be established from time to time by the Wildlife Resources Commission;

(5) Any amount in excess of the statutory fee for a particular lifetime license or lifetime subscription shall become an asset of the fund and shall qualify as a tax exempt donation to the State;

(6) Such other sources as may be specified by law.

(d) The Wildlife Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the fund. In recognition of such special trust, the following limitations and restrictions are placed on expenditures from the funds:

(1) Any limitations or restrictions specified by the donors on the uses of the income derived from gifts, grants and voluntary contributions shall be respected but shall not be binding.

(2) No expenditures or disbursements from the income from the proceeds derived from the sale of Infant Lifetime Sportsman or Youth Lifetime Sportsman Licenses pursuant to G.S. 113-270.1D(b)(1) or (2) shall be made for any purpose until the respective holders of such licenses attain the age of 16 years. The State Treasurer, as custodian of the fund, shall determine actuarially from time to time the amount of income within the fund which remains encumbered by and which is free of this restriction. For such purpose, the executive director shall cause deposits of proceeds from Infant Lifetime Sportsman Licenses to be distinguished and deposits of proceeds from Youth Lifetime Sportsman Licenses to be accompanied by information as to the ages of the license recipients.

(3) No expenditure or disbursement shall be made from the principal of the Wildlife Endowment Fund except as otherwise provided by law.

(4) The income received and accruing from the investments of the Wildlife Endowment Fund must be spent only in furthering the conservation of wildlife resources and the efficient operation of the North Carolina Wildlife Resources Commission in accomplishing the purposes of the agency as set forth in G.S. 143-239.

(e) The Board of Trustees of the Wildlife Endowment Fund may accumulate the investment income of the fund until the income, in the sole judgment of the trustees, can provide a significant supplement to the budget of the Wildlife Resources Commission. After that time the trustees, in their sole discretion and authority, may direct expenditures from the income of the fund for the purposes set out in division (4) of subsection (d).

(f) Expenditure of the income derived from the Wildlife Endowment Fund shall be made through the State budget accounts of the Wildlife Resources Commission in accordance with the provisions of the Executive Budget Act. The Wildlife Endowment Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(g) The Wildlife Endowment Fund and the income therefrom shall not take the place of State appropriations or agency receipts placed in the Wildlife Resources Fund, or any part thereof, but any portion of the income of the Wildlife Endowment Fund available for the purpose set out in division (4) of subsection (d) shall be used to supplement other income of and appropriations to the Wildlife Resources Commission to the end that the Commission may improve and increase its services and become more useful to a greater number of people.

(h) In the event of a future dissolution of the Wildlife Resources Commission, such State agency as shall succeed to its budgetary authority shall, ex officio, assume the trusteeship of the Wildlife Endowment Fund and shall be bound by all the limitations and restrictions placed by this section on expenditures from the fund. No repeal or modification of this section or of G.S. 143-239 shall alter the fundamental purposes to which the Wildlife Endowment Fund may be applied. No future dissolution of the Wildlife Resources Commission or substitution of any agency in its stead shall invalidate any lifetime license issued in accordance with G.S. 113-270.1D(b), 113-270.2(c)(2), or 113-271(d)(3). (1981, c. 482, s. 1; 1993, c. 257, s. 15; 1993 (Reg. Sess., 1994), c. 684, ss. 10-12.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1995, substituted "pursuant to G.S. 113-270.1D" for "in accordance with G.S. 113-270.2(c)(1a), 113-271(d)(1c) and 113-272(d)(1a2)" in subdivision (c)(2); substituted "pursuant to G.S. 113-270.2(c)(2) and G.S. 113-271(d)(3)" for "in accordance with G.S. 113-270.2(c)(3a) and 113-271(d)(2b)" in subdivision (c)(3); in subdivision (d)(2) substituted "Infant Lifetime Sportsman or Youth Lifetime Sportsman Licenses pursuant to G.S. 113-270.1D(b)(1) or (2)" for "types I and Y lifetime sportsman combination licenses specified in G.S. 113-270.2(c)(1a), 113-271(d)(1c) and 113-272(d)(1a2)," substituted "Infant Lifetime Sportsman Licenses" for "type I licenses," substituted "Youth Lifetime Sportsman Licenses" for "type Y licenses"; and substituted "G.S. 113-270.1D(b), 113-270.2(c)(2), or 113-271(d)(3)" for "G.S. 113-270.2(c)(1a) or (3a), 113-271(d)(1c) or (2b), or 113-272(d)(1a2)" in subsection (h).

Article 25B.

State Nature and Historic Preserve Dedication Act.

§ 143-260.10F. Road right-of-way; Pilot Mountain State Park.

(a) Notwithstanding the provisions of G.S. 143-260.10, the State of North Carolina may convey a road right-of-way to the Department of Transportation across lands within Pilot Mountain State Park. The right-of-way for the road shall begin 71.9 feet S 70° 41′12″ E of park corner number 94 as shown on the June 1, 1968, Pilot Mountain State Park survey by Southern Mapping & Engineering Company. From point of beginning N 70° 41′ 12″ W for 71.9 feet, then following the centerline of the existing road SR 2068 N 02° 31′ 21″ E for 24.13 feet, then N 25° 17′ 28″ E for 225.06 feet, then N 35° 31′48″ E for 139.35 feet, then with the northern boundary of the park S 55° 48′ 51″ E for 30.0 feet, then along new right-of-way line for approximately 350 feet as shown on Department of Transportation Plat of SR 2068, Shoals Road — McKinney Cut, Surry County, W.O. 6.742488 dated August 28, 1992, to point of beginning. The area of this right-of-way is approximately 17,850 square feet.

(b) The property described in subsection (a) of this section is removed from the State Nature and Historic Preserve and deleted from the State Parks System.

(c) The State shall only use the proceeds from this right-of-way to acquire lands for the expansion of Pilot Mountain State Park. (1993, c. 457, s. 1.)

Editor's Note. — The section above is set out to correct typographical error in the main pamphlet.

§ 143-260.10G. Removal of land in Crowders Mountain State Park from the State Nature and Historic Preserve.

(a) Notwithstanding the provisions of G.S. 143-260.10(6), the portion of that certain tract or parcel of property at Crowders Mountain State Park in Gaston County, Crowders Mountain Township, described in Deed Book 1240, Page 451, and containing 225 square feet and as shown in a survey by R&W Engineering and Surveying entitled "Conveyance of 0.0052 acres owned by Crowders Mountain State Park, Gaston Co., NC" and dated January 18, 1995, is removed from the State Nature and Historic Preserve.

(b) The property described in subsection (a) of the section is deleted from the State Parks System pursuant to G.S. 113-44.14.

(c) The State may only exchange this property for other property for the expansion of Crowders Mountain State Park or sell this land and use the proceeds for that purpose. The State shall not otherwise sell or exchange this land. (1995, c. 131, s. 1.)

Editor's Note. — Session Laws 1995, c. 131, s. 3, made this section effective upon ratification. The Act was ratified May 31, 1995.

Session Laws 1995, c. 131, s. 2, provides in part that the General Assembly authorizes the deletion of Flemingtown Road Marina and a portion of property at Hanging Rock State Park from the State Parks System.

ARTICLE 31.

Tort Claims against State Departments and Agencies.

§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages; liability insurance in lieu of obligation under Article.

(a) The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of one hundred fifty thousand dollars ($150,000) cumulatively to all claimants on account of injury and damage to any one person. Community colleges and technical colleges shall be deemed State agencies for purposes of this Article. The fact that a claim may be brought under more than one Article under this Chapter shall not increase the foregoing maximum liability of the State.

(b) If a State agency, otherwise authorized to purchase insurance, purchases a policy of commercial liability insurance providing coverage in an amount at least equal to the limits of the State Tort Claims Act, such insurance coverage shall be in lieu of the State's obligation for payment under this Article.

(c) The North Carolina High School Athletic Association, Inc., is a State agency for purposes of this Article, and its liability in tort shall be only under this Article. This subsection does not extend to any independent contractor of the Association. The Association shall be obligated for payments under this Article, through the purchase of commercial insurance or otherwise, in lieu of any responsibility of the State or The University of North Carolina for this payment. The Association shall be similarly obligated to reimburse or have reimbursed the Department of Justice for any expenses in defending any claim against the Association under this Article. (1951, c. 1059, s. 1; 1953, c. 1314; 1955, c. 400, s. 1; c. 1102, s. 1; c. 1361; 1957, c. 65, s. 11; 1965, c. 256, s. 1; 1967, c. 1206, s. 1; 1971, c. 893, s. 1; 1973, c. 507, s. 5; c. 1225, s. 1; 1977, c. 464, s. 34; c. 529, ss. 1, 2; 1979, c. 1053, s. 1; 1987, c. 684, s. 1; 1987 (Reg. Sess., 1988), c. 1087, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 19.33(a); c. 777, s. 5(a).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 777, s. 5, effective October 1, 1994, and applicable to claims arising on or after that date, in subsection (a), in the third sentence, substituted "one hundred fifty thousand dollars ($150,000)" for "one hundred thousand dollars ($100,000)."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 19.33, effective with respect to causes of action arising on or after the date of ratification of c. 769 (July 16, 1994), added subsection (c).

CASE NOTES

I. In General.
II. Procedure.

I. IN GENERAL.

But the Industrial Commission did not have jurisdiction, to hear plaintiffs claims under the Tort Claims Act, where plaintiff's only allegations were that members of the Parole Commission engaged in actions that were wanton, reckless and malicious, and that amounted to gross negligence. Collins v. North Carolina Parole Comm'n, 118 N.C. App. 544, 456 S.E.2d 333 (1995).

While Acting Within Scope of Employment. —

Although plaintiff attempted to sue defendant in his individual capacity so that governmental immunity would not apply, plaintiff's allegations of negligence against defendant related directly to his official duties as a sanitarian. Robinette v. Barriger, 116 N.C. App. 197, 447 S.E.2d 498 (1994), petition denied as to additional issues, 339 N.C. 615, 454 S.E.2d 257 (1995).

Plate Glass Window. — Safety manager was not responsible for the kind of glass which was installed in the building in the 1960's and neither knew nor should have known of the danger to plaintiff; therefore, assuming that plaintiff was an invitee, plaintiff's injuries from walking through the plate glass window were not due to any negligence on the part of defendant's safety manager. Ambrose v. University of North Carolina, 118 N.C. App. 659, 456 S.E.2d 342 (1995).

Negligence of Trooper Causing Automobile Accident. — Where trooper was speeding to try to find a possible drunk driver and struck plaintiff's car as she crossed the highway, the deputy commissioner's finding that the collision would have been avoided had the trooper managed to steer more to the left, when taken into account with the particular circumstances of the accident, mandated the conclusion that the trooper was negligent as a matter of law by failing to slow down when he saw plaintiff's vehicle positioning itself to pull out into his lane of travel. Minks v. North Carolina Hwy. Patrol, 116 N.C. App. 710, 449 S.E.2d 483 (1994).

Employee Is Personally Liable for Own Negligence. —

Recovery against the county board of education pursuant to the Tort Claims Act did not bar plaintiff's claims against the individual bus driver who caused the wreck, or plaintiff's uninsured motorist/underinsured motorist (UM/UIM) carrier for damages in excess of the maximum recovery allowable under the Tort Claims Act. Oakley v. Thomas, 112 N.C. App. 130, 434 S.E.2d 663 (1993).

Cited in Smith v. North Carolina Dep't of Natural Resources & Community Dev., 112 N.C. App. 739, 436 S.E.2d 878 (1993).

II. PROCEDURE.

Individual Commission Has Exclusive Jurisdiction. — A local health department is a state agency, rather than a county agency, and since defendant was an agent of the state, the action should have been filed with the Industrial Commission, which has exclusive jurisdiction of negligence actions against the state. Robinette v. Barriger, 116 N.C. App. 197, 447 S.E.2d 498 (1994), petition denied as to additional issues, 339 N.C. 615, 454 S.E.2d 257 (1995).

§ 143-291.3. Counterclaims by State.

The filing of a claim under this Article shall constitute consent by the plaintiff(s) to the jurisdiction of the Industrial Commission to hear and determine any counterclaim of one hundred fifty thousand dollars ($150,000) or less which may be filed on behalf of a State department, institution, or agency or a county or city board of education. A final award of the Industrial Commission awarding damages on a counterclaim shall be filed with the Clerk of the Superior Court of the county wherein the case was heard. These awards shall be docketed and shall be enforceable in the same manner as judgments of the General Court of Justice. Notwithstanding the provisions of Rule 12 of the Rules of Civil Procedure, nothing in this section shall require the filing of such a counterclaim. (1987 (Reg. Sess., 1988), c. 1087, s. 3; 1995, c. 509, s. 82.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted "one hundred fifty thousand dollars ($150,000)" for "one hundred thousand dollars ($100,000)".

§ 143-292. Notice of determination of claim; appeal to full Commission.

CASE NOTES

Findings and Conclusions of Full Commission. — The legislature's use of the word "may" indicates that although the full Commission is permitted to enter its own findings of fact and conclusions of law, it is not required to do so. Smith v. North Carolina Dep't of Natural Resources & Community Dev., 112 N.C. App. 739, 436 S.E.2d 878 (1993), cert. denied, 336 N.C. 74, 445 S.E.2d 37 (1994).

The function performed by the full Industrial Commission when addressing claims under the Tort Claims Act is not the same as the one it performs when hearing a workers' compensation claim. The Commission, when hearing appeals of claims from a hearing commissioner under the Tort Claims Act may make its own findings of fact and conclusions of law, but it is not required to do so. When the claimant appeals to the Commission, making only a general allegation that the hearing commissioner erred in finding that the defendant was not negligent and that such decision was not supported by the evidence, the Commission may respond to such appeal by reviewing the record and, when appropriate, may affirm and adopt the decision and order of the hearing commissioner. Brewington v. North Carolina Dep't of Cor., 111 N.C. App. 833, 433 S.E.2d 798 (1993), cert. denied, 335 N.C. 552, 439 S.E.2d 142 (1993).

Cited in Brewington v. North Carolina Dep't of Cor., 111 N.C. App. 833, 433 S.E.2d 798.

§ 143-296. Powers of Industrial Commission; deputies.

The members of the Industrial Commission, or a deputy thereof, shall have power to issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders, opinions, and awards based thereon, and punish for contempt. The Industrial Commission is authorized to appoint deputies and clerical assistants to carry out the purpose and intent of this Article, and such deputy or deputies are hereby vested with the same power and authority to hear and determine tort claims against State departments, institutions, and agencies as is by this Article vested in the members of the Industrial

Commission. Such deputy or deputies shall also have and are hereby vested with the same power and authority to hear and determine cases arising under the Workers' Compensation Act when assigned to do so by the Industrial Commission. The Commission may order parties to participate in mediation, under rules substantially similar to those approved by the Supreme Court for use in the Superior Court division, except the Commission shall determine the manner in which payment of the costs of the mediated settlement conference is assessed. (1951, c. 1059, s. 6; 1979, c. 714, s. 2; 1993, c. 399, s. 2; c. 321, s. 25(b); 1995, c. 358, s. 8(a); c. 437, s. 6(a); c. 467, s. 5(a); c. 507, s. 25.13.)

Editor's Note. — Session Laws 1993, c. 399, s. 5 provided that the amendment by s. 2 of c. 399 was effective October 1, 1993, and applied to claims pending on or filed after that date and would expire June 30, 1995. Session Laws 1995, c. 358, s. 8(a), extended the expiration date to July 14, 1995; Session Laws 1995, c. 437, s. 6(a), extended the expiration date to July 21, 1995; and Session Laws 1995, c. 467, s. 5(a), extended the expiration date to July 28, 1995. The provision in Session Laws 1993, c. 399, s. 5, that s. 2 would expire June 30, 1995, was deleted by Session Laws 1995, c. 507, s. 25.13.

Session Laws 1993, c. 321, s. 25(b) provides that, if HB 658 (Session Laws 1993, c. 399) is enacted, the first sentence of s. 4 of c. 399 is amended by deleting "only if the General Assembly appropriates funds to implement the purpose of this act." However, this language is in the second sentence of section 5 of Chapter 399 and reads "only if the General Assembly appropriates funds to implement the purpose of these sections."

The Revisor was informed that appropriation was made in 1994.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provision of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 fiscal biennium."

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

CASE NOTES

Quoted in Smith v. North Carolina Dep't of Natural Resources & Community Dev., 112 N.C. App. 739, 436 S.E.2d 878 (1993).

§ 143-299.2. Limitation on payments by the State.

The maximum amount which the State may pay cumulatively to all claimants on account of injury and damage to any one person, whether the claim or claims are brought under this Article or Article 31A or Article 31B, shall be one hundred fifty thousand dollars ($150,000), less any commercial liability insurance purchased by the State and applicable to the claim or claims under G.S. 143-291(b), 143-300.6(c), or 143-300.16(c). The fact that a claim or claims may be brought under more than one Article under this Chapter shall not increase the above maximum liability of the State. (1987 (Reg. Sess., 1988), c. 1087, s. 6; 1995, c. 509, s. 83.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted "one hundred fifty thousand dollars ($150,000)" for "one hundred thousand dollars ($100,000)".

CASE NOTES

Cited in Oakley v. Thomas, 112 N.C. App. 130, 434 S.E.2d 663 (1993).

§ 143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles.

CASE NOTES

Cited in Oakley v. Thomas, 112 N.C. App. 130, 434 S.E.2d 663 (1993).

ARTICLE 31A.

Defense of State Employees, Medical Contractors and Local Sanitarians.

§ 143-300.3. Defense of State employees.

CASE NOTES

Applied in Gray v. Laws, 51 F.3d 426 (4th Cir. 1995).

§ 143-300.4. Grounds for refusal of defense.

CASE NOTES

The attorney general's office possesses the responsibility for determining whether it represents an employee, and this determination is not made post-hoc by a jury verdict; thus, the jury's finding of actual malice has no effect on the attorney general's ability or responsibility to represent the defendants. Houck & Sons v. Transylvania County, 852 F. Supp. 442 (W.D.N.C. 1993), aff'd, 36 F.3d 1092 (4th Cir. 1994).

§ 143-300.6. Payments of judgments; compromise and settlement of claims.

CASE NOTES

Section Is Not Waiver of Sovereign Immunity. — Nothing in the language of subsection (a) of this section indicates that the state is consenting to suits against it, but only that the state will pay judgments awarded by "courts of competent jurisdiction" in certain suits brought against state employees. Though other provisions of Article 31A suggest that subsection (a) requires the state to pay judgments entered in certain official-capacity actions against its employees, subsection (a) makes it clear that by agreeing to pay such judgments, the State does not intend to waive any underlying defense of sovereign immunity, either common law or constitutional. North Carolina ex rel. Thornburg v. Blackwood, 7 F.3d 1140 (4th Cir. 1993), cert. denied, — U.S. —, 114 S. Ct. 2106, 128 L. Ed. 2d 667 (1994).

Actions in Federal Court. — Whatever Article 31A may imply about the State's willingness to allow the payment of obligations created by subsection (a) of this section to be enforced against it in its own courts, the implication that it is willing to permit such obligations to be enforced against it in federal court is not so "overwhelming" as to permit a finding of Eleventh Amendment waiver of immunity. North Carolina ex rel. Thornburg v. Blackwood, 7 F.3d 1140 (4th Cir. 1993), cert. denied, — U.S. —, 114 S. Ct. 2106, 128 L. Ed. 2d 667 (1994).

Applied in Gray v. Laws, 51 F.3d 426 (4th Cir. 1995).

Stated in Houck & Sons v. Transylvania County, 852 F. Supp. 442 (W.D.N.C. 1993), aff'd, 36 F.3d 1092 (4th Cir. 1994).

§ 143-300.8. Defense of local sanitarians.

CASE NOTES

Applied in Gray v. Laws, 51 F.3d 426 (4th Cir. 1995).

Quoted in Houck & Sons v. Transylvania County, 852 F. Supp. 442 (W.D.N.C. 1993), aff'd, 36 F.3d 1092 (4th Cir. 1994).

ARTICLE 33C.

Meetings of Public Bodies.

§ 143-318.9. Public policy.

CASE NOTES

An action by a Board of Education to give itself a pay raise must be deliberated at a meeting open to the public. Jacksonville Daily News Co. v. Onslow County Bd. of Educ., 113 N.C. App. 127, 439 S.E.2d 607 (1993).

§ 143-318.10. All official meetings of public bodies open to the public.

(a) Except as provided in G.S. 143-318.11, G.S. 143-318.14A, G.S. 143-318.15, and G.S. 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, "public body" means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, "public body" means the governing board of a "public hospital" as defined in G.S. 159-39 and the governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.

(c) "Public body" does not include (1) a meeting solely among the professional staff of a public body, or (2) the medical staff of a public hospital or the medical staff of a hospital that has been sold or conveyed pursuant to G.S. 131E-8.

(d) "Official meeting" means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. Such minutes shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session. (1979, c. 655, s. 1; 1985 (Reg. Sess., 1986), c. 932, s. 4; 1991, c. 694, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 570, s. 1; 1995, c. 509, s. 135.2(p).)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and not affecting pending litigation, rewrote subsection (b); in subsection (c) deleted "and shall not be construed to include" preceding "(1)," substituted "a meeting solely among" for "meetings among," inserted "or (2) the medical staff of a public hospital," and deleted from the end "unless the staff members have been appointed to and are meeting as an authority, board, commission, committee, council, or other body established by one of the methods listed in subsection (b)(2) of this section, or (2) meetings among the medical staff of a public hospital"; and in subsection (e), in the first sentence substituted "including any closed sessions" for "excluding any executive sessions," in the second sentence substituted "the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session" for "G.S. 132-6."

The 1995 amendment, effective July 29, 1995, added "or the medical staff of a hospital that has been sold or conveyed pursuant to G.S. 131E-8" in subsection (c).

CASE NOTES

Cited in Dockside Discotheque, Inc. v. Board of Adjustment, 115 N.C. App. 303, 444 S.E.2d 451, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994).

§ 143-318.11. Closed sessions.

(a) Permitted Purposes. — It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

(1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.

(2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.

(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.

(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.

(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.

(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

(7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.

(b) Repealed by Session Laws 1991, c. 694, s. 4.

(c) Calling a Closed Session. — A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.

(d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 570, s. 2. (1979, c. 655, s. 1; 1981, c. 831; 1985 (Reg. Sess., 1986), c. 932, s. 5; 1991, c. 694, ss. 3, 4; 1993 (Reg. Sess., 1994), c. 570, s. 2; 1995, c. 509, s. 84.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and not affecting pending litigation, substituted "Closed sessions" for "Executive sessions" as the section catchline, rewrote subsections (a) and (c), and repealed subsection (d).

The 1995 amendment, effective July 29, 1995, substituted periods for semicolons at the end of subdivisions (a)(2), (a)(3), and (a)(4).

CASE NOTES

Quoted in Durham Herald Co. v. County of Durham, 334 N.C. 677, 435 S.E.2d 317 (1993).

Cited in Dockside Discotheque, Inc. v. Board of Adjustment, 115 N.C. App. 303, 444 S.E.2d 451, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994).

§ 143-318.16A. Additional remedies for violations of Article.

CASE NOTES

Declaration of Violation. — Where Board of Education improperly gave itself a pay raise the proper result was a declaration that the board violated the Open Meetings Law; no purpose would have been served by voiding the Board's action in such a manner as to require return of the monies by the board members. Jacksonville Daily News Co. v. Onslow County Bd. of Educ., 113 N.C. App. 127, 439 S.E.2d 607 (1993).

Plaintiff Not Entitled to Exemption from Local Ordinance. — Because plaintiff could not meet the definition of a nonconforming situation, plaintiff was not entitled to be exempted from the provisions in the local ordinance prohibiting adult entertainment in plaintiff's district. Dockside Discotheque, Inc. v. Board of Adjustment, 115 N.C. App. 303, 444 S.E.2d 451, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994).

§ 143-318.16B. Assessments and awards of attorneys' fees.

When an action is brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A, the court may make written findings specifying the prevailing party or parties, and may award the prevailing party or parties a reasonable attorney's fee, to be taxed against the losing party or parties as part of the costs. The court may order that all or any portion of any fee as assessed be paid personally by any individual member or members of the public body found by the court to have knowingly or intentionally committed the violation; provided, that no order against any individual member shall issue in any case where the public body or that individual member seeks the advice of an attorney, and such advice is followed. (1985 (Reg. Sess., 1986), c. 932, s. 2; 1993 (Reg. Sess., 1994), c. 570, s. 3.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and not affecting pending litigation, substituted "Assessments and awards of attorneys' fees" for "Attorney's fees awarded to prevailing party" as the section catchline; in the first sentence substituted "When an action is" for

"In any action," substituted "may make" for "shall make," substituted "may award" for "shall award"; and added the second sentence.

CASE NOTES

Cited in Jacksonville Daily News Co. v. Onslow County Bd. of Educ., 113 N.C. App. 127, 439 S.E.2d 607 (1993).

§ 143-318.16C. Accelerated hearing; priority.

Actions brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts. (1993 (Reg. Sess., 1994), c. 570, s. 4.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994) c. 570, s. 12, made this section effective October 1, 1994, and provides that the section shall not affect pending litigation.

§ 143-318.16D. Local acts.

Any reference in any city charter or local act to an "executive session" is amended to read "closed session". (1993 (Reg. Sess., 1994), c. 570, s. 4.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994) c. 570, s. 12, made this section effective October 1, 1994, and provides that the section shall not affect pending litigation.

§ 143-318.17. Disruptions of official meetings.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 36.

Department of Administration.

§ 143-336. Definitions.

As used in this Article:

"Agency" includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions, county and city boards of education, and other local public bodies.

"Community college buildings" means all buildings, utilities, and other property developments located at a community college, which is defined in G.S. 115D-2(2).

"Department" means the Department of Administration, unless the context otherwise requires.

"Public buildings" means all buildings owned or maintained by the State in the City of Raleigh, but does not mean any building which a State agency other than the Department of Administration is required by law to care for and maintain.

"Public buildings and grounds" means all buildings and grounds owned or maintained by the State in the City of Raleigh, but does not mean any building or grounds which a State agency other than the Department of Administration is required by law to care for and maintain.

"Public grounds" means all grounds owned or maintained by the State in the City of Raleigh, but does not mean any grounds which a State agency other than the Department of Administration is required by law to care for and maintain.

"Secretary" means the Secretary of Administration, unless the context otherwise requires.

"State buildings" mean all State buildings, utilities, and other property developments except the State Legislative Building, railroads, highway structures, bridge structures, and any buildings, utilities, or property owned or leased by the North Carolina Global TransPark Authority.

But under no circumstances shall this Article or any part thereof apply to the judicial or to the legislative branches of the State. (1957, c. 215, s. 2; c. 269, s. 1; 1963, c. 1, s. 6; 1971, c. 1097, s. 1; 1975, c. 879, s. 46; 1989, c. 58, s. 1; 1991, c. 749, s. 5; 1993 (Reg. Sess., 1994), c. 777, s. 4(h).)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 17, 1994, substituted "Global TransPark" for "Air Cargo Transport" in the definition of "State buildings."

§ 143-340. Powers and duties of Secretary.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-341. Powers and duties of Department.

The Department of Administration has the following powers and duties:

(1) Repealed by Session Laws 1979, 2nd Session, c. 1137, s. 38.
(2) Purchase and Contract:
  a. To exercise those powers and perform those duties which were, at the time of the ratification of this Article, conferred by statute upon the former Division of Purchase and Contract.
(3) Architecture and Engineering:
  a. To examine and approve all plans and specifications for the construction or renovation of:
    1. All State buildings; and
    2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129

prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

b. To prepare preliminary studies and cost estimates and otherwise to assist all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

(4) Real Property Control:

a. To prepare and keep current a complete and accurate inventory of all land owned or leased by the State or by any State agency. This inventory shall show the location, acreage, description, source of title and current use of all land (including swamplands or marshlands) owned by the State or by any State agency, and the agency to which each tract is currently allocated. Surveys may be made where necessary to obtain information for the purposes of this inventory. Accurate plats or maps of all such land may be prepared, or copies obtained where such maps or plats are available.

b. To prepare and keep current a complete and accurate inventory of all buildings owned or leased (in whole or in part) by the State or by any State agency. This inventory shall show the location, amount of floor space and floor plans of every building owned or leased by the State or by any State agency, and the agency to which each building, or space therein, is currently allocated. Floor plans of every such building shall be prepared or copies obtained where such floor plans are available, where needed for use in the allocation of space therein.

c. To obtain and deposit with the Secretary of State the originals of all deeds and other conveyances of real property to the State or to any State agency, copies of all leases wherein the State or any State agency is lessor or lessee, and certified copies of wills, judgments, and other instruments whereby the State or any State agency has acquired title to real property. Where an original of a deed, lease, or other instrument cannot be found, but has been recorded in the registry of office of the clerk of superior court of any county, a certified copy of such deed, conveyance, or instrument shall be obtained and deposited with the Secretary of State.

d. To acquire, whether by purchase, exercise of the power of eminent domain, lease, or rental, all land, buildings, and space in buildings for all State agencies, subject to the approval of the Governor and Council of State in each instance. The Governor, acting with the approval of the Council of State, may adopt rules (i) exempting from any or all of the requirements of this paragraph such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any contract entered into or any proceeding instituted contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

d1. To require all State departments, institutions, and agencies to use State-owned office space instead of negotiating or renegotiating leases for rental of office space. Any lease entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and the Council of State.

The Department of Administration shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division no later than May 1 of each year on leased office space.

e. To make all sales of real property (including marshlands or swamplands) owned by the State or by any State agency, with the approval of the Governor and Council of State in each instance. All conveyances in fee by the State shall be executed in accordance with the provisions of G.S. 146-74 through 146-78. Any conveyance of land made or contract to convey land entered into without the approval of the Governor and Council of State is voidable in the discretion of the Governor and Council of State. The proceeds of all sales of swamplands or marshlands shall be dealt with in the manner required by the Constitution and statutes.

f. With the approval of the Governor and Council of State, to make all leases and rentals of land or buildings owned by the State or by any State agency, and to sublease land or buildings leased by the State or by any State agency from another owner, where such land or building owned or leased by the State or by any State agency is not needed for current use. The Governor, acting with the approval of the Council of State, may adopt rules (i) exempting from any or all of the requirements of this paragraph such classes of lease or rental transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any lease or rental agreement entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

g. To allocate and reallocate land, buildings, and space in buildings to the several State agencies, in accordance with rules adopted by the Governor with the approval of the Council of State; provided that if the proposed reallocation is of land with an appraised value of at least twenty-five thousand dollars ($25,000), the reallocation may only be made after consultation with the Joint Legislative Commission on Governmental Operations. The authority granted in this paragraph shall not apply to the State Legislative Building and grounds or to the Legislative Office Building and grounds.

h. To require any State agency to make reports regarding the land and buildings owned by it or allocated to it at such times and in such form as the Department may deem necessary.

i. To determine whether all deeds, judgments, and other instruments whereby title to real estate has been or may be acquired by the State or by any State agency have been properly recorded in the county wherein the real property is situated, and to make or cause to be made proper recordation of such instruments. The Department may have previously recorded instruments which conveyed title to or from the State or any State agency or officer reindexed, where necessary, to show the State of North Carolina or grantor or grantee, as the case may be, and the cost of such reindexing shall be paid from the State Land Fund.

j. To call upon the Attorney General for advice and assistance in the performance of any of the foregoing duties.

k. None of the provisions of this subdivision apply to highway or railroad rights-of-way or other interests or estates in land held for the same or similar purposes, or to the acquisition or disposition of such rights-of-way, interests, or estates in land.

l. To manage and control the vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands of the State, pursuant to Chapter 146 of the General Statutes.

m. To contract for or approve all contracts for all appraisals and surveys of real property for all State agencies; provided, however, this provision shall not apply to appraisals and surveys obtained in connection with the acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation.

n. To petition for the annexation of state-owned lands into any municipality.

(5) Administrative Analysis:
  a. To study the organization, methods, and procedures of all State agencies, to formulate plans for improvements in the organization, methods, and procedures of any agency studied, and to advise and assist any agency studied in effecting improvements in its organization, methods, and procedures.
  b. To report to the Governor its findings and recommendations concerning improvements in the organization, methods, and procedures of any State agency, when such improvements cannot be effected by the cooperative efforts of the Department and the agency concerned.
  c. To submit to the Governor for transmittal to the General Assembly recommended legislation where such legislation is necessary to effect improvements in the organization, methods, and procedures of any State agency.

(6) State and Regional Planning:
  a. To assist the Director of the Budget in reviewing the capital improvements needs and requests of all State agencies, and in preparing a coordinated biennial capital improvements budget and longer range capital improvements programs.
  b. In cooperation with State agencies and other public and private agencies, to collect, analyze, and keep up-to-date a comprehensive collection of economic and social data pertinent to State planning, which shall be available to State and local governmental agencies and private agencies.
  c. To coordinate and review all planning activity relative to federal government requirements for general statewide or regional comprehensive program planning.
  d. To make economic analyses, studies, and projections and to advise the Governor on courses of action desirable for the maintenance of a sound economy.
  e. To encourage and assist in the development of the planning process within State and local governmental agencies.
  f. To assist State agencies by providing them with basic information and technical assistance needed in preparing their short-range and long-range programs.
  g. To develop and maintain liaison and cooperative arrangements with federal, interstate, State, and private agencies and organizations in the interest of obtaining information and assistance with respect to State and regional planning.
  h. To develop and maintain a comprehensive plan for the development of the State, representing the coordinated efforts and contributions of all participating planning groups.
  i. In cooperation with the counties, the cities and towns, the federal government, multi-state commissions and private agencies and organizations, to develop a system of multi-county, regional planning districts to cover the entire State, and to assist in preparing for those districts comprehensive development plans coor-

dinated with the comprehensive development plan for the State.

(7) Development Programs:
  a. To participate in development programs, to enter into contracts, formulate plans and to do all things necessary to implement development programs in any area of the State.
  b. To accept, receive and disburse, in furtherance of its functions, any funds, grants and services made available by the federal government and its agencies, any county, municipality, private or civic sources.

(8) General Services:
  a. To locate, maintain and care for public buildings and grounds; to establish, locate, maintain, and care for walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers, and tablets on public grounds; and to beautify the public grounds.
  b. To provide necessary and adequate cleaning and janitorial service, elevator operation service, and other operation or maintenance services for the public buildings and grounds.
  c. To provide necessary night watchmen for the public buildings and grounds.
  d. To make prompt repair of all public buildings and the equipment, furniture, and fixtures thereof; and to establish and operate shops for that purpose.
  e. To keep in repair, out of funds appropriated for that purpose, the furniture of the halls of the Senate and House of Representatives and the rooms of the Capitol used by the officers, clerks, and other employees of the General Assembly.
  f. Struck out by Session Laws 1959, c. 68, s. 3.
  g. To establish and operate a central mailing system for all State agencies, and in connection therewith and in the discretion of the Secretary, to make application for and procure a post-office substation for that purpose, and to do all things necessary in connection with the maintenance of the central mailing system. The Secretary may allocate and charge against the respective departments and agencies their proportionate parts of the cost of the maintenance of the central mailing system.
  h. To provide necessary and adequate messenger service for the State agencies served by the Department. However, this may not be construed as preventing the employment and control of messengers by any State agency when those messengers are compensated out of the funds of the employing agency.
  i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:
    1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.

2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.
3. To require on a schedule determined by the Department all State agencies to transfer ownership, custody or control of any or all passenger motor vehicles within the ownership, custody or control of that agency to the Department, except those motor vehicles under the ownership, custody or control of the Highway Patrol or the State Bureau of Investigation which are used primarily for law-enforcement purposes, and except those motor vehicles under the ownership, custody or control of the Department of Crime Control and Public Safety for Butner Public Safety which are used primarily for law-enforcement, fire, or emergency purposes.
4. To maintain, store, repair, dispose of, and replace state-owned motor vehicles under the control of the Department. The Department shall ensure that state-owned vehicles are not normally replaced until they have been driven for 90,000 miles or more.
5. Upon proper requisition, proper showing of need for use on State business only, and proper showing of proof that all persons who will be driving the motor vehicle have valid drivers' licenses, to assign suitable transportation, either on a temporary or permanent basis, to any State employee or agency. An agency assigned a motor vehicle may not allow a person to operate that motor vehicle unless that person displays to the agency and allows the agency to copy that person's valid driver's license. Notwithstanding G.S. 20-30(6), persons or agencies requesting assignment of motor vehicles may photostat or otherwise reproduce drivers' licenses for purposes of complying with this subpart.

   As used in this subpart, "suitable transportation" means the standard vehicle in the State motor fleet, unless special towing provisions are required by the employee or agency. The Department may not assign any employee or agency a motor vehicle that is not suitable. The Department shall not approve requests for vehicle assignment or reassignment when the purpose of that assignment or reassignment is to provide any employee with a newer or lower mileage vehicle because of his or her rank, management authority, or length of service or because of any non-job-related reason. The Department shall not assign "special use" vehicles, such as four-wheel drive vehicles or law enforcement vehicles, to any agency or individual except upon written justification, verified by historical data, and accepted by the Secretary.

6. To allocate and charge against each State agency to which transportation is furnished, on a basis of mileage or of rental, its proportionate part of the cost of maintenance and operation of the motor pool.

   The amount allocated and charged by the Department of Administration to State agencies to which transportation is furnished shall be at least as follows:

   I. Pursuit vehicles and full size four-wheel drive vehicles $.24/mile.
   II. Vans and compact four-wheel drive vehicles — $.22/mile.
   III. All other vehicles — $.20/mile.

7. To adopt, with the approval of the Governor, reasonable rules for the efficient and economical operation, maintenance, repair, and replacement, as limited in paragraph 4. of this subdivision, of all state-owned motor vehicles under the control of the Department, and to enforce those rules; and to adopt, with the approval of the Governor, reasonable rules regulating the use of private motor vehicles upon State business by the officers and employees of State agencies, and to enforce those rules. The Department, with the approval of the Governor, may delegate to the respective heads of the agencies to which motor vehicles are permanently assigned by the Department the duty of enforcing the rules adopted by the Department pursuant to this paragraph. Any person who violates a rule adopted by the Department and approved by the Governor is guilty of a Class 1 misdemeanor.

7a. To adopt with the approval of the Governor and to enforce rules and to coordinate State policy regarding (i) the permanent assignment of state-owned passenger motor vehicles and (ii) the use of and reimbursement for those vehicles for the limited commuting permitted by this subdivision. For the purpose of this subdivision 7a, "state-owned passenger motor vehicle" includes any state-owned passenger motor vehicle, whether or not owned, maintained or controlled by the Department of Administration, and regardless of the source of the funds used to purchase it. Notwithstanding the provisions of G.S. 20-190 or any other provisions of law, all state-owned passenger motor vehicles are subject to the provisions of this subdivision 7a; no permanent assignment shall be made and no one shall be exempt from payment of reimbursement for commuting or from the other provisions of this subdivision 7a except as provided by this subdivision 7a. Commuting, as defined and regulated by this subdivision, is limited to those specific cases in which the Secretary has received and accepted written justification, verified by historical data.

The Department shall not assign any state-owned motor vehicle that may be used for commuting other than those authorized by the procedure prescribed in this subdivision.

A State-owned passenger motor vehicle shall not be permanently assigned to an individual who is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless (i) the individual's duties are routinely related to public safety or (ii) the individual's duties are likely to expose the individual routinely to life-threatening situations. A State-owned passenger motor vehicle shall also not be permanently assigned to an agency that is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless the agency can justify to the Division of Motor Fleet Management the need for permanent assignment because of the unique use of the vehicle. Each agency, other than the Department of Transportation, that has a vehicle assigned to it or has an employee to whom a vehicle is assigned shall submit a quarterly report to the Division of Motor Fleet Management on the miles driven during the quarter by the assigned vehicle. The Division of Motor Fleet Management shall review the report to verify that each motor vehicle has been driven at the minimum allowable rate. If it has not and if the department by whom the individual to which the car is assigned is employed or the agency to which the car is assigned cannot justify the lower mileage for the quarter, the permanent assignment shall be revoked immediately. The Department of Transportation shall submit an annual report to the Division of Motor Fleet Management on the miles driven during the year by vehicles assigned to the Department or to employees of the Department. If a vehicle included in this report has not been driven at least 12,600 miles during the year, the Department of Transportation shall review the reasons for the lower mileage and decide whether to terminate the assignment. The Division of Motor Fleet Management may not revoke the assignment of a vehicle to the Department of Transportation or an employee of that Department for failure to meet the minimum mileage requirement unless the Department of Transportation consents to the revocation.

Every individual who uses a State-owned passenger motor vehicle, pickup truck, or van to drive between the individual's official work station and his or her home, shall reimburse the State for these trips at a rate computed by the Department. This rate shall approximate the benefit derived from the use of the vehicle as prescribed by federal law. Reimbursement shall be for 20 days per month regardless of how many days the individual uses the vehicle to commute during the month. Reimbursement shall be made by payroll deduction. Funds derived from reimbursement on vehicles owned by the Motor Fleet Management Division shall be deposited to the credit of the Division; funds derived from reimbursements on vehicles initially purchased with appropriations from the Highway Fund and not owned by the Division shall be deposited in a Special Depository Account in the Department of Transportation, which shall revert to the Highway Fund; funds derived from reimbursement on all other vehicles shall be deposited in a Special Depository Account in the Department of Administration which shall revert to the General Fund. Commuting, for purposes of this paragraph, does not include those individuals whose office is in their home, as determined by the Department of Administration, Division of Motor Fleet Management. Also, this paragraph does not apply to the following vehicles: (i) clearly marked police and fire vehicles, (ii) delivery trucks with seating only for the driver, (iii) flatbed trucks, (iv) cargo carriers with over a 14,000 pound capacity, (v) school and passenger buses with over 20 person capacities, (vi) ambulances, (vii) hearses, (viii) bucket trucks, (ix) cranes and derricks, (x) forklifts, (xi) cement mixers, (xii) dump trucks, (xiii) garbage trucks, (xiv) specialized utility repair trucks (except vans and pickup trucks), (xv) tractors, (xvi) unmarked law-enforcement vehicles that are used in undercover work and are operated by full-time, fully sworn law-enforcement officers whose primary duties include carrying a firearm, executing search warrants, and making arrests, and (xvii) any other vehicle exempted under Section 274(d) of the Internal Revenue Code of 1954, and Federal Internal Revenue Services regulations based thereon. The Department of Administration, Division of Motor Fleet Management, shall report quarterly to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office on individuals who use State-owned passenger motor vehicles, pickup trucks, or vans between their official work stations and their homes, who are not required to reimburse the State for these trips.

The Department of Administration shall revoke the assignment or require the Department owning the vehicle to revoke the assignment of a State-owned passenger motor vehicle, pickup truck or van to any individual who:

I. Uses the vehicle for other than official business except in accordance with the commuting rules;

II. Fails to supply required reports to the Department of Administration, or supplies incomplete reports, or supplies reports in a form unacceptable to the Department of Administration and does not cure the deficiency within 30 days of receiving a request to do so;

III. Knowingly and willfully supplies false information to the Department of Administration on applications for permanent assignments, commuting reimbursement forms, or other required reports or forms;

IV. Does not personally sign all reports on forms submitted for vehicles permanently assigned to him or her and does not cure the deficiency within 30 days of receiving a request to do so;

V. Abuses the vehicle; or

VI. Violates other rules or policy promulgated by the Department of Administration not in conflict with this act.

A new requisition shall not be honored until the Secretary of the Department of Administration is assured that the violation for which a vehicle was previously revoked will not recur.

The Department of Administration, with the approval of the Governor, may delegate, or conditionally delegate, to the respective heads of agencies which own passenger motor vehicles or to which passenger motor vehicles are permanently assigned by the Department, the duty of enforcing all or part of the rules adopted by the Department of Administration pursuant to this subdivision 7a. The Department of Administration, with the approval of the Governor, may revoke this delegation of authority.

Prior to adopting rules under this paragraph, the Secretary of Administration may consult with the Advisory Budget Commission.

Notwithstanding the provisions of this section and G.S. 14-247, the Department of Administration may allow the organization sanctioned by the Governor's Council on Physical Fitness to conduct the North Carolina State Games to use State trucks and vans for the State Games of North Carolina. The Department of Administration shall not charge any fees for the use of the vehicles for the State Games. The State shall incur no liability for any damages resulting from the use of vehicles under this provision. The organization that conducts the State Games shall carry liability insurance of not less than one million dollars ($1,000,000) covering such vehicles while in its use and shall be responsible for the full cost of repairs to these vehicles if they are damaged while used for the State Games.

8. To adopt and administer rules for the control of all state-owned passenger motor vehicles and to require State agencies to keep all records and make all reports regarding motor vehicle use as the Secretary deems necessary.

9. To acquire motor vehicle liability insurance on all State-owned motor vehicles under the control of the Department.
10. To contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the Secretary, of prison labor for use in connection with the operation of a central motor pool and related activities.
11. To report annually to the General Assembly on any rules adopted, amended or repealed under paragraphs 3, 7, or 7a of this subdivision.

j. To establish and operate central mimeographing and duplicating services, central stenographical and clerical pools, and other central services, if the Governor after appropriate investigation deems it advisable from the standpoint of efficiency and economy in operation to establish any or all such services. The Secretary may allocate and charge against the respective agencies their proportionate part of the cost of maintenance and operation of the central services which are established, in accordance with the rules adopted by him and approved by the Governor and Council of State pursuant to paragraph k, below. Upon the establishment of central mimeographing and duplicating services, the Secretary may, with the approval of the Governor, require any State agency to be served by those central services to transfer to the Department ownership, custody, and control of any or all mimeographing and duplicating equipment and supplies within the ownership, custody, or control of such agency.

k. To require the State agencies and their officers and employees to utilize the central facilities and services which are established; and to adopt, with the approval of the Governor and Council of State, reasonable rules and procedures requiring the utilization of such central facilities and services, and governing their operation and the charges to be made for their services.

l. To provide necessary information service for visitors to the Capitol.

m. To perform such additional duties and exercise such additional powers as may be assigned to it by statute or by the Governor.

(9) Repealed by Session Laws 1989, c. 239, s. 2, effective June 6, 1989.

(10) Block Grants. — To establish and maintain a block grants manual that will ensure uniform administration of block grant funds. The manual shall be a comprehensive source of reference for all general and statewide administrative procedures for block grant funds. The manual shall contain the applicable procedures for: the contents of an application, which shall be as simple as possible; the awarding of or contracting with block grant funds; auditing, which shall, to the extent possible, promote the use of single audits of grantees; the ensuring of civil rights compliance by grantees; and monitoring. (1957, c. 215, s. 2; c. 269, s. 1;

1959, c. 683, ss. 2-4; c. 1326; 1963, c. 1, s. 5; 1965, c. 1023; 1969, c. 1144, s. 2; 1971, c. 1097, s. 3; 1975, c. 399, ss. 1, 2; c. 879, s. 46; 1979, c. 136, s. 1; c. 544; 1979, 2nd Sess., c. 1137, s. 38; 1981, c. 300; c. 859, ss. 48-51; 1981 (Reg. Sess., 1982), c. 1282, s. 62; 1983, c. 267, s. 1; c. 717, s. 74; c. 761, ss. 58, 151, 173, 174; c. 923, s. 217; 1983 (Reg. Sess., 1984), c. 1034, s. 122; 1985, c. 479, ss. 168, 170, 174; c. 757, ss. 174, 175, 177; c. 791, s. 51; 1985 (Reg. Sess., 1986), c. 955, ss. 94, 94.1; 1987, c. 738, ss. 43-45, 47(a); c. 827, s. 220; c. 874; 1987 (Reg. Sess., 1988), c. 1086, s. 34(b); 1989, c. 58, s. 2; c. 239, s. 2; 1991, c. 542, s. 10; c. 689, s. 22; 1993, c. 539, s. 1030; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 97, s. 1; c. 402, s. 1.)

Editor's Note. —

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 1995, c. 97, s. 1, effective May 22, 1995, added the last paragraph in subdivision (8)(i)(7a).

Session Laws 1995, c. 402, s. 1, effective July 10, 1995, in subdivision (8)i.7a., in the second paragraph substituted "the individual" for "him" in subdivision (ii) of the first sentence, added the third sentence, substituted "Division of Motor Fleet Management shall review the report to verify" for "Department of Administration shall verify, on a quarterly basis" in the fourth sentence, deleted "in view of the minimum annual rate" following "for the quarter" in the fifth sentence, and added the sixth through last sentences; in the first sentence of the third paragraph substituted "the individual's" for "his", and "his or her home" for "his home"; and added "or her" in subdivision IV of the fourth paragraph.

§ 143-345.1. Rules and regulations.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-345.2. Disorderly conduct in and injury to public buildings and grounds.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 37.

Salt Marsh Mosquito Control.

§ 143-347: Repealed by Session Laws 1995, c. 123, s. 1, effective May 30, 1995.

ARTICLE 38.

Water Resources.

§ 143-354. Ordinary powers and duties of the Commission.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-355. Powers and duties of the Department.

(a) Repealed by Session Laws 1989, c. 603, s. 1, effective July 11, 1989.

(b) Functions to Be Performed. — The Department shall:

(1) Request the North Carolina Congressional Delegation to apply to the Congress of the United States whenever deemed necessary for appropriations for protecting and improving any harbor or waterway in the State and for accomplishing needed flood control, shore-erosion prevention, and water-resources development for water supply, water quality control, and other purposes.

(2) Initiate, plan, and execute a long-range program for the preservation, development and improvement of rivers, harbors, and inland ports, and to promote the public interest therein.

(3) Prepare and recommend to the Governor and the General Assembly any legislation which may be deemed proper for the preservation and improvement of rivers, harbors, dredging of small inlets, provision for safe harbor facilities, and public tidewaters of the State.

(4) Make engineering studies, hydraulic computations, hydrographic surveys, and reports regarding shore-erosion projects, dams, reservoirs, and river-channel improvements; to develop, for budget and planning purposes, estimates of the costs of proposed new projects; to prepare bidding documents, plans, and specifications for harbor, coastal, and river projects, and to inspect materials, workmanship, and practices of contractors to assure compliance with plans and specifications.

(5) Cooperate with the United States Army Corps of Engineers in causing to be removed any wrecked, sunken or abandoned vessel or unauthorized obstructions and encroach-

ments in public harbors, channels, waterways, and tidewaters of the State.

(6) Cooperate with the United States Coast Guard in marking out and establishing harbor lines and in placing buoys and structures for marking navigable channels.

(7) Cooperate with federal and interstate agencies in planning and developing water-resource projects for navigation, flood control, hurricane protection, shore-erosion prevention, and other purposes.

(8) Provide professional advice to public and private agencies, and to citizens of the State, on matters relating to tidewater development, river works, and watershed development.

(9) Discuss with federal, State, and municipal officials and other interested persons a program of development of rivers, harbors, and related resources.

(10) Make investigations and render reports requested by the Governor and the General Assembly.

(11) Participate in activity of the National Rivers and Harbors Congress, the American Shore and Beach Preservation Association, the American Watershed Council, the American Water Works Association, the American Society of Civil Engineers, the Council of State Governments, the Conservation Foundation, and other national agencies concerned with conservation and development of water resources.

(12) Prepare and maintain climatological and water-resources records and files as a source of information easily accessible to the citizens of the State and to the public generally.

(13) Formulate and administer a program of dune rebuilding, hurricane protection, and shore-erosion prevention.

(14) Include in the biennial budget the cost of performing the additional functions indicated above.

(15) Initiate, plan, study, and execute a long-range floodplain management program for the promotion of health, safety, and welfare of the public. In carrying out the purposes of this subsection, the primary responsibility of floodplain management rests with the local levels of government and it is, therefore, the policy of this State and of this Department to provide guidance, coordination, and other means of assistance, along with the other agencies of this State and with the local levels of government, to effectuate adequate floodplain management programs.

(b1) The Department is directed to pursue an active educational program of floodplain management measures, to include in each biennial report a statement of flood damages, location where floodplain management is desirable, and suggested legislation, if deemed desirable, and within its capacities to provide advice and assistance to State agencies and local levels of government.

(c) Repealed by Session Laws 1961, c. 315.

(d) Investigation of Coasts, Ports and Waterways of State. — The Department is designated as the official State agency to investigate and cause investigations to be made of the coasts, ports and waterways of North Carolina and to cooperate with agencies of the federal and State government and other political subdivisions in making such investigations. The provisions of this section shall not be construed as in any way interfering with the powers and duties of the Utilities Commission, relating to the acquiring of rights-of-way for the Intra-Coastal Waterway; or to authorize the Department to represent the State in connection with such duties.

(e) Registration with Department Required; Registration Periods. — Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this State, shall register annually with the Department on forms to be furnished by the said Department. The registration required hereby shall be made during the period from January 1 to January 31 of each year.

(f) Samples of Cuttings to Be Furnished the Department When Requested. — Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner by the use of power machinery shall furnish the Department samples of cuttings from such depths as the Department may require from all wells constructed by such person, firm or corporation, when such samples are requested by the Department. The Department shall bear the expense of delivering such samples. The Department shall, after an analysis of the samples submitted, furnish a copy of such analysis to the owner of the property on which the well was constructed; the Department shall not report the results of any such analysis to any other person whatsoever until the person legally authorized to do so authorizes in writing the release of the results of the analysis.

(g) Reports of Each Well Required. — Every person, firm or corporation engaged in the business of drilling, boring, coring, or constructing wells with power machinery within the State of North Carolina shall, within 30 days of the completion of each well, report to the Department on forms furnished by the Department the location, size, depth, number of feet of casing used, method of finishing, and formation log information of each such well. In addition such person, firm or corporation shall report any tests made of each such well including the method of testing, length of test, draw-down in feet and yield in gallons per minute. The person, firm or corporation making such report to the Department shall at the time such report is made also furnish a copy thereof to the owner of the property on which the well was constructed.

(h) Drilling for Petroleum and Minerals Excepted. — The provisions of this Article shall not apply to drillings for petroleum and minerals.

(i) Penalty for Violation. — Any person violating the provisions of subsections (e), (f) and (g) of G.S. 143-355 shall be guilty of a Class 3 misdemeanor and, upon conviction, shall only be punished by a fine of fifty dollars ($50.00). Each violation shall constitute a separate offense.

(j) Miscellaneous Duties. — The Department shall make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State and take such measures as it may consider necessary to promote their development; and to supervise, guide, and control the performance of the duties set forth in subsection (b) of this section and to hold hearings with regard thereto. In connection with administration of the well-drilling law the Department may prepare analyses of well cuttings for mineral and petroleum content.

(k) Water Use Information. — Any person using, withdrawing, diverting or obtaining water from surface streams, lakes and underground water sources shall, upon the request of the Department, file a monthly report with the Department showing the amount of water used, withdrawn, diverted or obtained from such sources. Such report shall be on a form supplied by the Department and shall show the identification of the water well or other withdrawal facility, location, withdrawal rate (measured in gallons per minute), and total gallons withdrawn during the month. Reports required to be filed under this subsection shall be filed on or before the fifteenth day of the month succeeding the month during which the using, withdrawing, diverting or obtaining water required to be reported occurred. This subsection does not apply to withdrawals or uses by individuals or families for household, livestock, or gardens. All reports required under this subsection are provided solely for the purpose of the Department. Within the meaning of this subsection the term "person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, and private or public corporations organized or existing under the laws of this State or any other state or country.

(*l*) Each unit of local government that provides public water services or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department. The Department shall provide technical assistance with the preparation of plans to units of local government upon request and to the extent that the Department has resources available to provide assistance. At a minimum, local units of government shall include in local water supply plans all information that is readily available to them. However this subsection shall be construed to require the preparation of local water supply plans only to the extent that technical assistance is made available to units of local government from the Department. Plans shall include present and projected population, industrial development, and water use within the service area, present and future water supplies, an estimate of the technical assistance that may be needed at the local level to address projected water needs, and any other related information as the Department may require in the preparation of a State water supply plan. Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. Local plans and revised plans shall be submitted to the Department once they have been approved by the unit(s) of local government.

(m) In order to assure the availability of adequate supplies of good quality water to protect the public health and to support desirable economic growth, the Department shall develop a State water supply plan. The State water supply plan shall include the information and projections required to be included in local plans, a summary of the technical assistance needs indicated by local plans, and shall indicate the extent to which the various local plans are compatible. The State plan shall identify potential conflicts among the various local plans and ways in which local water supply programs could be better coordinated. (1959, c. 779, s. 3; 1961, c. 315; 1967, c. 1069, ss. 1-3; c. 1070, s. 1; c. 1071, ss. 3, 4; c. 1117, s. 1; 1973, c. 1262, ss. 23, 28, 86; 1977, c. 771, s. 4; 1981, c. 514, ss. 2, 3; 1989, c. 603, s. 1; 1993, c. 513, s. 7(a); c. 539, s. 1034; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 509, s. 85.)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1995 amendment, effective July 29, 1995, inserted "plan" following "local water supply" in subsection (*l*).

ARTICLE 47A.

Art Works in State Buildings.

§§ 143-408.1 through 143-408.7: Repealed by Session Laws 1995, c. 324, s. 12.2, effective July 1, 1995.

Editor's Note. — Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

ARTICLE 49A.

Equal Employment Practices.

§ 143-422.1. Short title.

Legal Periodicals. —

For article, "Wrongful Discharge and the North Carolina Equal Employment Practices Act: The Localization of Federal Discrimination Law", see 21 N.C. Cent. L.J. 54 (1995).

§ 143-422.2. Legislative declaration.

Legal Periodicals. —

For article, "Wrongful Discharge and the North Carolina Equal Employment Practices Act: The Localization of Federal Discrimination Law", see 21 N.C. Cent. L.J. 54 (1995).

CASE NOTES

The plain language of this statute provides no guidance concerning the requisite elements to establish a prima facie case of a claim under it and there is no basis in the decisional or statutory law of North Carolina for determining even such crucial matters as the burden of proof, which party is to bear that burden, whether there is a defense to a claim flowing from this section, or even whether damages may be compensatory only or punitive. Newton v. Lat Purser & Assocs., 843 F. Supp. 1022 (W.D.N.C. 1994).

No Cause of Action for Wrongful Discharge. —

Because plaintiff stated a claim for sexual harassment and wrongful discharge under Title VII, she stated a claim for wrongful discharge in violation of the public policy expressed in this section, which was sufficient to withstand a motion to dismiss. Of course, insofar as plaintiff's claim was characterized as wrongful discharge in bad faith, that claim was dismissed because North Carolina courts do not recognize a separate and distinct bad faith exception to employment at will. Phillips v. J.P. Stevens & Co., 827 F. Supp. 349 (M.D.N.C. 1993).

Disparate Treatment Test. — In order to demonstrate a prima facie case of disparate treatment under this section, employee must show by a preponderance of the evidence that: (1) she is a member of a protected class; (2) she was qualified for her job and her job performance was satisfactory; (3) she was fired; and (4) other employees who are not members of the protected class were retained under apparently similar circumstances. Hughes v. Bedsole, 48 F.3d 1376 (4th Cir. 1995).

In order to demonstrate a prima facie case of disparate treatment, employee must eliminate concerns that she was fired because of her performance or qualifications, two of the most common nondiscriminatory reasons for any adverse employment decision. Hughes v. Bedsole, 48 F.3d 1376 (4th Cir. 1995).

Sexual Discrimination — County Employee. — Where employee alleged that employer wrongfully discharged her on the basis of her sex in violation of the public policy enunciated in this act, the statute did not provide for a specific statutory remedy, and the court would analyze her claim under the common law of wrongful discharge; the specific statutory remedy for state employees did not apply to plaintiff because she was a county employee. Hughes v. Bedsole, 48 F.3d 1376 (4th Cir. 1995).

Private State Law Cause of Action. — The court assumed without deciding that this statute created a private state law cause of action for the forms of employment discrimination embraced by it, rather than a mere policy statement and given this assumption, the court believed it must abstain from hearing both counts one and two and dismiss them under Burford v. Sun Oil Co., 319 U.S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424 (1943). Newton v. Lat Purser & Assocs., 843 F. Supp. 1022 (W.D.N.C. 1994).

Summary judgment inappropriate where plaintiff established that material issues of fact existed with regard to his discriminatory discharge claims, and established that such issues remained on his claim of wrongful discharge in violation of North Carolina public policy. Summary judgment was, therefore, inappropriate. Mumford v. CSX Transp., 878 F. Supp. 827 (M.D.N.C. 1994).

Cited in Jackson v. Kimel, 992 F.2d 1318 (4th Cir. 1993); Abels v. Renfro Corp., 335 N.C. 209, 436 S.E.2d 822 (1993); McCullough v. Branch Banking & Trust Co., 844 F. Supp. 258 (E.D.N.C. 1993), aff'd, 35 F.3d 127 (4th Cir. 1994).

§ 143-422.3. Investigations; conciliations.

Legal Periodicals. — For article, "Wrongful Discharge and the North Carolina Equal Employment Practices Act: The Localization of Federal Discrimination Law", see 21 N.C. Cent. L.J. 54 (1995).

ARTICLE 52.

Pesticide Board.

Part 1. Pesticide Control Program: Organization and Functions.

§ 143-437. Pesticide Board; functions.

The Pesticide Board shall be the governing board for the programs of pesticide management and control set forth in this Article. The Pesticide Board shall have the following powers and duties under this Article:

(1) To adopt rules and regulations and make policies for the programs set forth in this Article.

(2) To carry out a program of planning, environmental and biological monitoring, and of investigation into long-range

needs and problems concerning pesticides. In order to encourage the cooperation of private property owners needed to implement the provisions of this subdivision, the Board may enter into agreements with private property owners to conduct sampling, testing, monitoring, and related activities on their property. Information obtained pursuant to these agreements shall not be disclosed in a manner that would permit the identification of an individual property owner unless the property owner has given permission to disclose the information.

(3) To collect, analyze and disseminate information necessary for the effective operation of the programs set forth in this Article.

(4) To provide professional advice to public and private agencies and citizens of the State on matters relating to pesticides, in cooperation with other State agencies, with professional groups, and with North Carolina State University and other educational institutions.

(5) To accept gifts, devises and bequests, and with the approval of the Governor to apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association or individual, and may comply with the terms, conditions and limitations of the grant, in order to accomplish any of the purposes of the Board, such grant funds to be expended pursuant to the Executive Budget Act.

(6) To inform and advise the Governor on matters involving pesticides, and to prepare and recommend to the Governor and the General Assembly any legislation which may be deemed proper for the management and control of pesticides in North Carolina.

(7) To make annual reports to the Governor and to make such other investigations and reports as may be requested by the Governor or the General Assembly.

(8) To exempt any federal or State agency from any provision of this Article if it is determined by the Board that emergency conditions exist which require exemption. (1971, c. 832, s. 1; 1977, c. 199; 1979, c. 448, s. 14; 1995, c. 445, s. 1.)

Effect of Amendments. — The 1995 amendment, effective July 18, 1995, added the second and third sentences in subdivision (2).

Part 2. Regulation of the Use of Pesticides.

§ 143-442. Registration.

(a) Every pesticide prior to being distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the office of the Board, and such registration shall be renewed annually before January 1 for the ensuing calendar year. Beginning in 1988, the Board may by rule adopt a system of staggered three-year registrations. The applicant for registration shall file with the Board a statement including:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant;
(2) The name of the pesticide;
(3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for use;
(4) If requested by the Board, a full description of the tests made and the results thereof upon which the claims are based;
(5) In the case of renewal of registration, a statement with respect to information which is different from that furnished when the pesticide was last registered;
(6) A Material Safety Data Sheet for the pesticide; and
(7) Any other information needed by the Board to determine the amount of annual assessment payable by the applicant.

(b) The applicant shall pay an annual registration fee of thirty dollars ($30.00) plus an additional annual assessment for each brand or grade of pesticide registered. The annual assessment shall be fifty dollars ($50.00) if the applicant's gross sales of the pesticide in this State for the preceding 12 months for the period ending September 30th were more than five thousand dollars ($5,000.00) and twenty-five dollars ($25.00) if gross sales were less than five thousand dollars ($5,000.00). An additional two hundred dollars ($200.00) delinquent registration penalty shall be assessed against the registrant for each brand or grade of pesticide which is marketed in North Carolina prior to registration as required by this Article. In the case of multi-year registration, the annual fee and additional assessment for each year shall be paid at the time of the initial registration. The Board shall give a pro rata refund of the registration fee and additional assessment to the registrant in the event that registration is canceled by the Board or by the United States Environmental Protection Agency.

(c) The Board, when it deems necessary in the administration of this Article, may require the submission of the complete formula of any pesticide.

(d) If the pesticide is properly registered with the United States Environmental Protection Agency and is in compliance with the requirements of G.S. 143-443, the Board shall register the pesticide. Provided, however, that if it does not appear to the Board that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this Part, it shall not register the article and in turn shall notify the applicant of the manner in which the article, labeling, or other material required to be submitted fail to comply. The Board may suspend or cancel the registration of a pesticide when the pesticide or its labeling does not comply with this Part.

(e) The Board is authorized and empowered to refuse to register, or to cancel the registration of any brands and grades of pesticides as herein provided, if the registrant fails or refuses to comply with the provisions of this Part, or any rules and regulations promulgated thereunder, or, upon satisfactory proof that the registrant or applicant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this Part, or any rules and regulations promulgated thereunder. The Board may require the manufacturer or distributor of any pesticide, for which registration has been refused, cancelled, suspended or voluntarily discontinued or which has been found adulterated or deficient in its active ingredient, to remove such pesticide from the marketplace.

(f) Notwithstanding any other provisions of this Part, registration is not required in the case of a pesticide shipped from one plant within this State to another plant within this State operated by the same person.

(g) Any pesticide declared to be discontinued by the registrant must be registered by the registrant for one full year after distribution is discontinued. Any pesticide in channels of distribution after the aforesaid registration period may be confiscated and disposed of by the Board, unless the pesticide is acceptable for registration and is continued to be registered by the manufacturer or the person offering the pesticide for wholesale or retail sale. Provided, however, this subsection shall not apply to any brand or grade of pesticide which the Board determines does not remain in channels of distribution due to method of sale by registrant directly to users thereof.

(h) A pesticide may be registered by the Board for experimental use, including use to control wild animal or bird populations, even though the Wildlife Resources Commission may not have concurred in the declaration of the animal or bird populations as pests under the terms of Article 22A of Chapter 113 of the General Statutes.

(i) The Board shall be empowered to set forth criteria for determining when a given product constitutes a different or separate brand or grade of pesticide.

(j) Each manufacturer, distributor or registrant of a pesticide shall supervise the activities of any employee or agent to prevent the making of deceptive or misleading statements about the pesticide. (1971, c. 832, s. 1; 1973, c. 389, ss. 1, 7; 1975, c. 425, ss. 1, 2; 1979, c. 448, ss. 2, 3; c. 830, s. 10; 1981, c. 592, s. 2; 1987, c. 559, ss. 3-7; c. 827, s. 39; 1989, c. 544, s. 13; 1993, c. 481, ss. 1.1, 2; 1995, c. 445, s. 2.)

Effect of Amendments. — The 1995 amendment, effective July 18, 1995, deleted "of all" preceding "brands and grades" in subsection (e).

§ 143-443. Miscellaneous prohibited acts.

(a) It shall be unlawful for any person to distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

(1) Any pesticide which has not been registered pursuant to the provisions of G.S. 143-442, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with the registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration: Except that, in the discretion of the Board, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.

(2) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which

the required information on the immediate container cannot be clearly read, a label bearing:
- a. The name and address of the manufacturer, registrant, or person for whom manufactured;
- b. The name, brand, or trademark under which said article is sold; and
- c. The net weight or measure of the content subject, however, to such reasonable variations as the Board may permit.

(3) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in G.S. 143-444, unless the label shall bear, in addition to any other matter required by this Part:
- a. The skull and crossbones;
- b. The word "poison" prominently, in red, on a background of distinctly contrasting color; and
- c. A statement of an antidote for the pesticide.

(4) The pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this Part, or any other white or lightly colored pesticide which the Board, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored, provided, that the Board may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if the Board determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any pesticide which is adulterated or misbranded, (or any device which is misbranded).

(6) Any pesticide in containers violating regulations adopted pursuant to G.S. 143-441. Pesticides found in containers which are unsafe due to damage or defective construction may be seized and impounded.

(b) It shall be unlawful:

(1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Part or regulations promulgated hereunder, or to add any substance to, or take any substance from a pesticide in a manner that may defeat the purpose of this Part;

(2) For any person to use for his own advantage or to reveal, other than to the Board or proper officials or employees of the State or federal government or to the courts of this State in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of G.S. 143-442.

(2a) Repealed by Session Laws 1981, c. 592, s. 3.

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

(4) For any person who contracts for the aerial application of a pesticide to permit the application of any pesticide that is designated on its labeling as toxic to bees without first notifying, based on available listings, the owner or operator of any apiary registered under the North Carolina Bee and Honey Act of 1977 that is within a distance designated by the Pesticide Board as necessary and appropriate to prevent damage or injury.

(5) For any person to distribute, sell or offer for sale any restricted use pesticide to any dealer who does not hold a valid North Carolina Pesticide Dealer License.

(6) For any person to assault, resist, impede, intimidate, or interfere with any State employee while that employee is engaged in the performance of his or her duties under this Article.

(7) For any person to apply, for compensation, a pesticide that has not been registered pursuant to G.S. 143-442. (1971, c. 832, s. 1; 1975, c. 425, s. 3; 1979, c. 448, ss. 4, 5; 1981, c. 547; c. 592, ss. 3, 4; 1987, c. 559, s. 8; 1995, c. 445, s. 3.)

Effect of Amendments. — The 1995 amendment, effective July 18, 1995, added subdivisions (b)(6) and (b)(7).

Part 3. Pesticide Dealers.

§ 143-448. Licensing of pesticide dealers; fees.

(a) No person shall act in the capacity of a pesticide dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a pesticide dealer unless he is licensed annually as provided in this Part. A separate license and fee shall be obtained for each location or outlet from which restricted use pesticides are distributed, sold, held for sale, or offered for sale.

(b) Applications for a pesticide dealer license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a non-refundable fee of thirty dollars ($30.00). All licenses issued under this Part shall expire on December 31 of the year for which they are issued.

(c) The license for a pesticide dealer may be renewed annually upon application to the Board, accompanied by a fee of thirty dollars ($30.00) for each license, on or before the first day of January of the calendar year for which the license is issued.

(d) Repealed by Session Laws 1981, c. 592, s. 6.

(e) Every licensed pesticide dealer who changes his address or place of business shall immediately notify the Board.

(f) The Board shall issue to each applicant that satisfies the requirements of this Part a license which entitles the applicant to conduct the business described in the application for the calendar year for which the license is issued, unless the license is sooner revoked or suspended. (1971, c. 832, s. 1; 1981, c. 592, s. 6; 1987, c. 559, ss. 2, 11; 1989, c. 544, s. 11; 1995, c. 445, s. 4.)

Effect of Amendments. — The 1995 amendment, effective July 18, 1995, substituted "thirty dollars ($30.00)" for "twenty-five dollars ($25.00)" in subsection (c).

Part 4. Pesticide Applicators and Consultants.

§ 143-456. Denial, suspension and revocation of license.

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(3) Operated faulty or unsafe equipment;

(4) Operated in a faulty, careless, or negligent manner;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

(6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required;

(7) Made false or fraudulent records, invoices, or reports;

(8) Operated unlicensed equipment;

(9) Used fraud or misrepresentation, or presented false information, in making an application for a license or renewal of a license;

(10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

(11) Aided or abetted a licensed or an unlicensed person to evade the provisions of this Article, combined or conspired with such a licensed or unlicensed person to evade the provisions of this Article, or allowed one's license to be used by an unlicensed person;

(12) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;

(13) Impersonated any state, county, or city inspector or official;

(14) Stored or disposed of containers or pesticides by means other than those prescribed on the labeling or by rule;

(15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

(16) Failed to pay a civil penalty assessed under this Article within 30 days after the date it is assessed.

(b) Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until such time has elapsed from the date of the order revoking said license as established by the Board (not to exceed two years), or if an appeal is taken from said order or revocation, not to exceed two years from the date of the order or final judgment sustaining said revocation. (1971, c. 832, s. 1; 1975, c. 425, ss. 6, 8; 1987, c. 559, s. 17; c. 827, s. 42; 1995, c. 445, s. 5.)

Effect of Amendments. — The 1995 amendment, effective July 18, 1995, added subdivision (a)(16).

§ 143-458. Rules and regulations concerning methods of application.

(a) The Board may adopt rules prescribing the method to be used in the application of pesticides and the times and places pesticides may be applied. The Board may adopt rules restricting or prohibiting the sale and use of pesticides in designated areas during specified time periods. In adopting rules under this subsection, the Board shall consider factors required to prevent damage or injury to the following by the drift or misapplication of pesticides:

(1) Plants, including forage plants, on adjacent or nearby land;
(2) Wildlife in the adjoining or nearby areas;
(3) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; or
(4) Other animals, persons or beneficial insects.

In issuing such regulations, the Board shall give consideration to pertinent research findings and recommendations of other agencies of this State or of the federal government.

(b) The Board may by regulation require that notice of a proposed application of a pesticide be given to landowners adjoining the property to be treated or in the immediate vicinity thereof, if it finds that such notice is necessary to carry out the purpose of this Article.

(c) A pesticide applicator, a pesticide applicator's employee, or an agent of a pesticide applicator shall not apply any substance that:

(1) Has the active ingredients contained in a pesticide that is registered pursuant to G.S. 143-442, and
(2) Is not registered as a pesticide pursuant to G.S. 143-442.

(d) A pesticide applicator, a pesticide applicator's employee, or an agent of a pesticide applicator shall not combine any substance whose application is prohibited under subsection (c) of this section with any other substance to apply as a pesticide or to apply for any other reason, whether the combination occurs before, during, or after the application.

(e) Any person who violates subsection (c) or (d) of this section shall be guilty of a Class 2 misdemeanor, which shall include a fine of up to one thousand dollars ($1,000) per violation. (1971, c. 832, s. 1; 1987, c. 827, s. 43; 1995, c. 478, s. 1.)

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, added subsections (c), (d) and (e).

Part 5. General Provisions.

§ 143-460. Definitions.

As used in this Article, unless the context otherwise requires:

(1) The term "active ingredient" means
    a. In the case of a pesticide other than a plant regulator,

defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

b. In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

d. In the case of a desiccant, an ingredient which will artificially accelerate the drying of a plant tissue.

(2) The term "adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(2a) "Antimicrobial pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any microorganism pest.

(3) Reserved.

(4) "Board" means the North Carolina Pesticide Board.

(5) "Commissioner" means the North Carolina Commissioner of Agriculture.

(6) "Committee" means the Pesticide Advisory Committee.

(7) The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(8) The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

(9) The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, weeds, nematodes, or such other pests as may be designated by the Board, but not including equipment used for the application of pesticides when sold separately therefrom.

(10) Repealed by Session Laws 1995, c. 445, s. 6, effective July 18, 1995.

(11) "Equipment" means any type of ground, water or aerial equipment, device, or contrivance using motorized, mechanical or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but shall not include any pressurized hand-sized household device used to apply any pesticide or any equipment, device or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.

(12) The term "fungus" means any non-chlorophyll-bearing thallophyte (that is any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

(13) The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi.

(14) The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.

(15) The term "inert ingredient" means an ingredient which is not an active ingredient.

(16) The term "ingredient statement" means

a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; and

b. In case the pesticide contains arsenic in any form, a statement of the percentages of total and water-soluble arsenic, each calculated as elemental arsenic.

(17) The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, wasps, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(18) The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(19) The term "label" means the written, printed, or graphic matter on, or attached to, the pesticide (or device) or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide (or device).

(20) The term "labeling" means all labels and other written, printed, or graphic matter:

a. Upon the pesticide (or device) or any of its containers or wrappers;

b. Accompanying the pesticide (or device) at any time;

c. To which reference is made on the label or in literature accompanying the pesticide (or device) except when accurate, nonmisleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this State or other states authorized by law to conduct research in the field of pesticides.

(21) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(22) "Manufacturer" includes any person engaged in the business of importing, producing, preparing, formulating, mixing, or processing pesticides.

(22a) "Material Safety Data Sheet" or "MSDS" means a chemical information sheet which would satisfy the requirements of the Hazardous Chemicals Right-to-Know Act, Article 18, Chapter 95 of the General Statutes, or any law enacted in substitution therefor.

(23) The term "misbranded" shall apply:

a. To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

b. To any pesticide:

1. If it is an imitation of or is offered for sale under the name of another pesticide;
2. If its labeling bears any reference to registration under this Article;
3. If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;
4. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;
5. If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase except that the Board may permit the statement to appear prominently on some other part of the container, if the size or form of the container make it impractical to comply with the requirements of this subparagraph;
6. If any word, statement, or other information required by or under the authority of this Article to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or
7. If in the case of an insecticide, nematicide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticides or
8. In the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticides, except that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose

for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

(24) The term "nematicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(25) The term "nematode" means invertebrate animals of the phylum nemathelminthes and class Nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

(25a) The phrase "packaged, labeled and released for shipment" means the point in the production and marketing process of a pesticide where the pesticide has been produced, and it is the intent of the producer that such product be introduced into commerce for direct retail sale.

(26) A "person" is any person, including (but not limited to) an individual, firm, partnership, association, company, joint-stock association, public or private institution, municipality or county or local government unit (as defined in G.S. 143-215.40(b)), state or federal governmental agency, or private or public corporation organized under the laws of this State or the United States or any other state or country.

(26a) The term "pest" means any insect, rodent, nematode, fungus, weed or any other noxious or undesirable microorganism or macroorganism, except viruses, bacteria, or other microorganisms on or in living persons or other living animals.

(27) "Pest control consultant" means any person, who, for a fee, offers or supplies technical advice, supervision, or aid, or recommends the use of specific pesticides for the purpose of controlling insects, plant diseases, weeds, and other pests, but does not include any person regulated by the North Carolina Structural Pest Control Act (G.S. Chapter 106, Article 4C).

(28) The term "pesticide" means:

a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and

b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(29) "Pesticide applicator" means any person who owns or operates a pesticide application business or who provides, for compensation, a service that includes the application of pesticides upon the lands or properties of another; any public operator; any golf course operator; any seed treater; any person engaged in demonstration or research pest control; and any other person who applies pesticides for compensation and is not exempt from this definition. It does not include:

a. Any person who uses or supervises the use of a pesticide (i) only for the purpose of producing an agricultural commodity on property owned or rented by him or his employer, or (ii) only (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person, or (iii) only for the purposes set forth in (i) and (ii) above.

b. Any person who applies pesticides for structural pest control, as defined in the North Carolina Structural Pest Control Law (G.S. Chapter 106, Article 4C).

c. Any person certified by the Water Treatment Facility Operators Board of Certification under Article 2 of Chapter 90A of the General Statutes or by the Wastewater Treatment Operators Plant Certification Commission under Article 3 of Chapter 90A of the General Statutes who applies pesticides labeled for the treatment of water or wastewater.

d. Any person who applies antimicrobial pesticides that are not classified for restricted use and are not being used for agricultural, horticultural, or forestry purposes.

e. Any person who applies a general use pesticide to the property of another as a volunteer, without compensation.

f. Any person who is employed by a licensed pesticide applicator.

(30) The term "pesticide dealer" means any person who is engaged in the business of distributing, selling, offering for sale, or holding for sale restricted use pesticides for distribution directly to users. The term pesticide dealer does not include:

a. Persons whose sales of pesticides are limited to pesticides in consumer-sized packages (as defined by the Board) which are labeled and intended for home and garden use only and are not restricted use pesticides, or

b. Practicing veterinarians and physicians who prescribe, dispense, or use pesticides in the performance of their professional services.

(31) Repealed by Session Laws 1973, c. 389, s. 3.

(32) The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(33) "Public operator" means any person in charge of any equipment used by public utilities (as defined by General Statutes Chapter 62), State agencies, municipal corporations, or other governmental agencies applying pesticides.

(34) The term "registrant" means the person registering any pesticide pursuant to the provisions of this Article.

(35) The term "restricted use pesticide" or "pesticide classified for restricted use" means any pesticide or use classified as restricted by the Administrator of the United States Environmental Protection Agency or other pesticide or use which the Board has designated as such pursuant to G.S. 143-440.

(36) The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, attracting, or mitigating rodents or any other vertebrate animal which the Board shall declare to be a pest.

(36a) The phrase "to use any pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner not permitted by the labeling; provided that the phrase shall not include:

a. Applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling,

b. Applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless the labeling specifically states that the pesticide may be used only for the pests specified on the labeling,

c. Employing any method of application not prohibited by the labeling, or

d. Mixing pesticides or mixing a pesticide with a fertilizer when such mixture is not prohibited by the labeling.

(37) The term "weed" means any plant or part thereof which grows where not wanted.

(38) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this Article, pests; including but not limited to mammals, birds, and aquatic life. (1971, c. 832, s. 1; 1973, c. 389, s. 3; 1975, c. 425, s. 11; 1979, c. 448, ss. 9, 10; 1981, c. 592, ss. 9-11; 1987, c. 559, ss. 2, 18-20; 1991, c. 87, ss. 1, 2; 1995, c. 445, ss. 6, 7.)

Effect of Amendments. — Session Laws 1995, c. 445, ss. 6 and 7, effective July 18, 1995, repealed subdivision (10); in the first sentence of the introductory language of subdivision (29) substituted "means" for "includes", "operates" for "manages", "or who provides, for compensation, a service that includes the application of" for "which is engaged in the business of applying", and "applies pesticides for compensation" for "acts as a pesticide applicator"; substituted "who applies pesticides for structural pest control, as defined in" for "regulated by" in subdivision (29)b.; and added subdivisions (29)e. and (29)f.

§ 143-465. Reciprocity; intergovernmental cooperation.

(a) The Board may issue any license required by this Article on a reciprocal basis with other states without examination to a nonresident who is licensed in another state substantially in accordance with any of the provisions of the Article, provided that financial security as provided for in G.S. 143-467 is met.

(b) The Board may cooperate or enter into formal agreements with any other agency of this State or its subdivisions or with any agency of any other state or of the federal government for the purpose of enforcing any of the provisions of this Article.

(c) In order to avoid confusion resulting from diverse requirements and to avoid increased costs to the people of this State due to the necessity of complying with such diverse requirements in the manufacture and sale of such pesticides, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such pesticides. To this end the Board is authorized, after public hearing, to adopt by regulation such regulations, applicable to and in conformity with the primary standards established by this Article, as have been or may be prescribed with respect to pesticides by departments or agencies of the United States government.

(d) No county, city, or other political subdivision of the State shall adopt or continue in effect any ordinance, rule, regulation, or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of pesticides in any area subject to regulation by the Board pursuant to this Article. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from exercising its planning and zoning authority under Article 19 of Chapter 160A of the General Statutes or Article 18 of Chapter 153A of the General Statutes, or from exercising its fire prevention or inspection authority. (1971, c. 832, s. 1; 1995, c. 445, s. 8.)

Effect of Amendments. — The 1995 amendment, effective July 18, 1995, added subsection (d).

§ 143-466. Records; information; inspection; enforcement.

(a) The Board shall require licensees to maintain records with respect to the sale and application of such pesticides as it may from time to time prescribe. Such relevant information as the Board may deem necessary may be specified by rule. The records shall be kept for a period of three years from the date of the application of the pesticide to which the records refer, and shall be available for inspection and copying by the Board or its agents at its request.

(b) The Board may publish information regarding injury which may result from improper application or use of pesticides and the methods and precautions designed to prevent such injury.

(c) The Board may provide for inspection of any equipment used for application of pesticides and may require repairs or other changes before its further use for pesticide application. A list of requirements that equipment shall meet may be adopted by the Board by regulation.

(d) The Board may provide for inspection of any place of business where pesticides are stored or sold and may require changes in methods of handling, displaying and storing of all pesticides. A list of requirements that places of business must meet may be adopted by regulation of the Board.

(e) For the purpose of carrying out the provisions of this Article, inspectors designated by the Board may enter upon any public or private premises at reasonable times, in order:

(1) To have access for the purpose of inspecting the premises and any equipment subject to this Article and such premises on which such equipment is kept or stored;

(2) To inspect lands actually or reported to be exposed to pesticides;

(3) To inspect storage or disposal areas;

(4) To inspect or investigate complaints of injury to humans, land or plants; or

(5) To sample pesticides being applied, or to be applied.

No person shall refuse entry or access to any authorized representative of the Board who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties. Should the Board or its designated agent be denied access to any land where such access was sought for the purposes set forth in this Article, the Board may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may upon such application issue the search warrant for the purposes requested. (1971, c. 832, s. 1; 1995, c. 445, s. 9.)

Effect of Amendments. — The 1995 amendment, effective July 18, 1995, in subsection (a) substituted "rule" for "regulation" in the second sentence, added "and copying" in the third sentence, and made stylistic changes.

§ 143-469. Penalties.

(a) Any person who shall be adjudged to have violated any provision of this Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Board, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) A civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

(c) Proceedings for the assessment of civil penalties under this section shall be governed by Chapter 150B of the North Carolina General Statutes. If the person assessed a civil penalty fails to pay the penalty to the North Carolina Department of Agriculture, the Board may institute an action in the superior court of the county in which the person resides or has his principal place of business to recover the unpaid amount of said penalty. An action to recover a civil penalty under this section shall not relieve any party from any other penalty prescribed by law.

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars ($500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations. (1971, c. 832, s. 1; 1981, c. 592, s. 12; 1987, c. 559, s. 21; c. 827, s. 1; 1993, c. 539, s. 1035; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 445, s. 10.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1995 amendment, effective July 18, 1995, rewrote subsection (b).

ARTICLE 55.

The Southern Growth Policies Agreement.

§ 143-492. Article II. The Board.

(a) There is hereby created the Southern Growth Policies Board, hereinafter called "the Board."

(b) **(Applicable until January 1, 1997)** The Board shall consist of five members from each party state, as follows:

(1) The governor.

(2) Two members of the state legislature, one appointed by the presiding officer of each house of the legislature or in such other manner as the legislature may provide.

(3) Two residents of the state who shall be appointed by the governor to serve at his pleasure.

(b) **(Applicable January 1, 1997)** The Board shall consist of five members from each party state, as follows:

(1) The governor.

(2) Two members of the state legislature, one appointed by the presiding officer of each house of the legislature or in such other manner as the legislature may provide. For the Senate of North Carolina, the General Assembly provides that the appointment shall be made by the President Pro Tempore of the Senate.

(3) Two residents of the state who shall be appointed by the governor to serve at his pleasure.

(c) In making appointments pursuant to paragraph (b) (3), a governor shall, to the greatest extent practicable, select persons who, along with the other members serving pursuant to paragraph (b), will make the state's representation on the Board broadly representative of the several socioeconomic elements within his state.

(d)(1) A governor may be represented by an alternate with power to act in his place and stead, if notice of the designation of such alternate is given to the Board in such manner as its bylaws may provide.

(2) A legislative member of the Board may be represented by an alternate with power to act in his place and stead, unless the laws of his state prohibit such representation and if notice of the designation of such alternate is given to the Board in such manner as its bylaws may provide. An alternate for a legislative member of the Board shall be selected by the member from among the members of the legislative house in which he serves.

(3) A member of the Board serving pursuant to paragraph (b) (3) of this Article may be represented by another resident of his state who may participate in his place and stead, except that he shall not vote: Provided that notice of the identity and designation of the representative selected by the member is given to the Board in such manner as its bylaws may provide. (1973, c. 200, s. 1; 1995, c. 490, s. 50.)

Subsection (b) Set Out Twice — The first version of subsection (b) set out above is applicable until January 1, 1997. The second version of subsection (b) set out above is applicable January 1, 1997.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added the last sentence of subdivision (b)(2). For the applicability of this amendment, see editor's note.

ARTICLE 56.

Emergency Medical Services Act of 1973.

§ 143-509. Powers and duties of Secretary.

The Secretary of the Department of Human Resources has full responsibilities for supervision and direction of the emergency medical services program and, to that end, shall:

(1) After consulting with the Emergency Medical Services Advisory Council and with such local governments as may be involved, seek the establishment of statewide, regional and local emergency medical services operations;

(2) Repealed by Session Laws 1989, c. 74, effective April 26, 1989.

(3) Encourage and assist in the development of appropriately located comprehensive emergency treatment centers;

(4) Encourage and assist in the development of a statewide emergency medical services communications system which will enable transport vehicles to communicate with treatment facilities;

(5) Establish a State emergency medical services records system;

(6) Inspect ambulances, issue permits for operation of ambulance vehicles, train and license ambulance personnel and shall be responsible for the enforcement of all other quality control provisions of the Ambulance Act of 1967, Article 26 of Chapter 130 of the General Statutes of North Carolina;

(7) Designate emergency medical services radio frequencies and coordinate emergency medical services radio communications networks within FCC rules and regulations; and

(8) Promote the development of an air ambulance support system to supplement ground vehicle operations.

(9) Promote a means of training individuals to administer life-saving treatment to persons who suffer a severe adverse reaction to insect stings. Individuals, upon successful completion of this training program, may be approved by the North Carolina Medical Board to administer epinephrine to these persons, in the absence of the availability of physicians or other practitioners who are authorized to administer the treatment. This training may also be offered as part of the emergency medical technician training program. (1973, c. 208, s. 3; 1981, c. 927; 1989, c. 74; 1995, c. 94, s. 34.)

Effect of Amendments. — The 1995 amendment, effective May 22, 1995, substituted "North Carolina Medical Board" for "Board of Medical Examiners" in subdivision (9).

§ 143-514. Training programs; utilization of emergency services personnel.

The Department of Human Resources in cooperation with educational institutions shall develop training programs for emergency medical service personnel. Upon successful completion of such training programs and other programs approved by the North Carolina Medical Board, emergency medical services personnel may, in the course of their emergency medical services duties, perform such acts, tasks and functions as they have been trained to perform and as provided in rules and regulations of such Board, regardless of other provisions of law. (1973, c. 208, s. 8; c. 1121; 1995, c. 94, s. 35.)

Effect of Amendments. — The 1995 amendment, effective May 22, 1995, substituted "North Carolina Medical Board" for "Board of Medical Examiners of the State of North Carolina" in the second sentence.

Article 59.

Vocational Rehabilitation Services.

§ 143-545: Repealed by Session Laws 1995, c. 403, s. 1, effective July 15, 1995.

§ 143-545A. Purpose, establishment and administration of program; services.

(a) Policy. — Recognizing that disability is a natural part of human experience, the State establishes as its policy that individuals with physical and mental disabilities should be able to participate to the maximum extent of their abilities in the economic, educational, cultural, social, and political activities available to all citizens of the State. To implement this policy, the Department of Human Resources shall establish and operate comprehensive and accountable programs of vocational rehabilitation and independent living for persons with disabilities. These programs are to be administered by the Division of Vocational Rehabilitation Services in collaboration with the Division of Services for the Blind, which conducts vocational rehabilitation and independent living programs for individuals who are blind or visually impaired, pursuant to Chapter 111 of the General Statutes and the rules of the Commission for the Blind adopted pursuant to G.S. 143B-157. The programs so provided shall be administered according to the following principles:

(1) The opportunity and ability to work and to live independently are important activities that enhance not only the lives of individuals with disabilities but also the greater society in which they live. These activities fulfill the need to be productive, promote self-esteem, and allow for participation in the full array of activities of daily living;

(2) Eligible individuals with disabilities shall be provided individualized training, independent living services, and educational and support services that prepare them for independent living and competitive employment opportunities in integrated settings with reasonable accommodations;

(3) Individuals with disabilities shall be active participants in their own vocational rehabilitation/independent living programs and shall be involved in making meaningful and informed choices about vocational/independent living goals and objectives and the related services they receive; and

(4) As full partners in their vocational rehabilitation and independent living programs, participants in the programs shall provide information required by the Department to determine eligibility and the nature of their disabilities, shall use other resources that are available to assist in their programs, and shall assume joint responsibility with departmental staff for planning and implementing their programs.

(b) Services: —

(1) Vocational rehabilitation and independent living services provided by the Department shall address comprehensively the needs of each individual to the maximum extent possible within available resources. These services shall contain labor force development and training components and services that enhance the independence and full participation of citizens with disabilities in community life. Specific services shall include assessment services to determine eligibility and rehabilitation needs; counseling, guidance, and referral services; physical and mental restoration services; reader services; vocational and other training services; job development and job placement services; interpreter services; on-the-job or other related personal assistance services including attendant care services; mobility and rehabilitation technology services; training services necessary for living in the community; and supported employment services.

(2) The Secretary of the Department of Human Resources shall adopt rules to establish eligibility for services, the nature and scope of services to be provided, standards for community rehabilitation programs and qualified personnel to provide services and conditions, criteria, and procedures under which services may be provided including financial need for services. The following services shall not be conditioned on the client's or applicant's ability to pay for the cost of those services:

a. Evaluation of rehabilitation potential, except for those vocational rehabilitation services other than of a diagnostic nature that are provided under an extended evaluation of rehabilitation potential;

b. Counseling, guidance, and referral services; and

c. Placement.

(3) The Secretary of the Department of Human Resources or, when appropriate, the Commission for the Blind, shall establish by rule a formula for a schedule of rates and fees to be paid by clients and other third party purchasers for services.

(4) The Secretary of the Department of Human Resources or, when appropriate, the Commission for the Blind, shall establish formal appeals procedures that are consistent with those required by federal regulations so that any applicant for or client of vocational rehabilitation or inde-

pendent living services who is dissatisfied with any determinations made by rehabilitation counselors or coordinators concerning the furnishing or denial of services may request a timely review of those determinations. The appeal procedures shall be the same regardless of whether federal funds are included in the particular services. (1995, c. 403, s. 1(b).)

Editor's Note. — Session Laws 1995, c. 403, s. 3, made this section effective July 15, 1995.

§ 143-546: Repealed by Session Laws 1995, c. 403, s. 2(a), effective July 15, 1995.

§ 143-546A. Duties of Secretary; cooperation with federal rehabilitation services administration or successor.

(a) [Duties of Secretary]. — In carrying out the purposes of this Article, the Secretary of the Department of Human Resources shall:

(1) Ensure the cooperation of other divisions in the Department of Human Resources in implementing the provisions of this Article;

(2) Cooperate with other departments, agencies, and institutions, both public and private, in providing for the vocational rehabilitation and independent living of individuals with disabilities, in studying the problems involved, and in establishing, developing, and providing the programs, facilities, and services necessary to implement this Article;

(3) Conduct research and gather statistical data related to the vocational rehabilitation and independent living needs of individuals with disabilities; and

(4) Administer the expenditure of funds made available by appropriations by the General Assembly by grants from the federal government, and by gifts, grants, or reimbursements from private or public sources, or other sources, and any combination thereof for vocational rehabilitation and independent living services. Gifts or donations, from either public or private sources, as may be offered unconditionally or under conditions that are proper and consistent with this Article, shall be deposited in the State treasury in a fund to be known as the "Vocational Rehabilitation and Independent Living State Program Fund".

(b) Federal Funds. — In accepting federal funds provided under the Rehabilitation Act of 1973, as amended, the State accepts all of the provisions and benefits of the Act. The Department of Human Resources shall:

(1) Cooperate with the Federal Rehabilitation Services Administration or its successor agency in the administration of the Rehabilitation Act of 1973, as amended;

(2) Administer vocational rehabilitation and independent living services provided in cooperation with the Federal Rehabilitation Services Administration or its successor agency through an approved State plan;

(3) Adopt rules as required by the Rehabilitation Act of 1973, as amended, and federal regulations promulgated pursuant to it. (1995, c. 403, s. 2(b).)

Editor's Note. — Session Laws 1995, c. 403, s. 3, made this section effective July 15, 1995.

The bracked catchline in subsection (a) was inserted at the direction of the Revisor of Statutes.

The dashes following the subsection catchlines in this section were inserted at the direction of the Revisor of Statutes.

§ 143-547. Subrogation rights; withholding of information a misdemeanor.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Article 62.

North Carolina Child Fatality Prevention System.

§ 143-573. (Repealed effective February 1, 1997) Task Force — creation; membership; vacancies.

(a) There is created the North Carolina Child Fatality Task Force within the Department of Environment, Health, and Natural Resources for budgetary purposes only.

(b) The Task Force shall be composed of 36 members, 12 of whom shall be ex officio members, four of whom shall be appointed by the Governor, ten of whom shall be appointed by the Speaker of the House of Representatives, and ten of whom shall be appointed by the President Pro Tempore of the Senate. The ex officio members other than the Chief Medical Examiner shall be nonvoting members and may designate representatives from their particular departments, divisions, or offices to represent them on the Task Force. The members shall be as follows:

(1) The Chief Medical Examiner;
(2) The Attorney General;
(3) The Director of the Division of Social Services;
(4) The Director of the State Bureau of Investigation;
(5) The Director of the Division of Maternal and Child Health of the Department of Environment, Health, and Natural Resources;
(6) The Director of the Governor's Youth Advocacy and Involvement Office;
(7) The Superintendent of Public Instruction;
(8) The Chairman of the State Board of Education;
(9) The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services;

§ 143-573 has a delayed repeal date. See notes.

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(10) The Secretary of the Department of Human Resources;

(11) The Secretary of the Department of Environment, Health, and Natural Resources;

(11.1) The Director of the Administrative Office of the Courts;

(12) A director of a county department of social services appointed by the Governor upon recommendation of the President of the North Carolina Association of County Directors of Social Services;

(13) A representative from a Sudden Infant Death Syndrome counseling and education program appointed by the Governor upon recommendation of the Director of the Division of Maternal and Child Health of the Department of Environment, Health, and Natural Resources;

(14) A representative from the North Carolina Child Advocacy Institute appointed by the Governor upon recommendation of the President of the Institute;

(14.1) A director of a local department of health, appointed by the Governor upon the recommendation of the President of the North Carolina Association of Local Health Directors;

(15) A representative from a private group, other than the North Carolina Child Advocacy Institute, that advocates for children, appointed by the Speaker of the House of Representatives upon recommendation of private child advocacy organizations;

(16) A pediatrician, licensed to practice medicine in North Carolina, appointed by the Speaker of the House of Representatives upon recommendation of the North Carolina Pediatric Society;

(17) A representative from the North Carolina League of Municipalities appointed by the Speaker of the House of Representatives upon recommendation of the League;

(18) Two public members appointed by the Speaker of the House of Representatives;

(19) A county or municipal law enforcement officer appointed by the President Pro Tempore of the Senate upon recommendation of organizations that represent local law enforcement officers;

(20) A district attorney appointed by the President Pro Tempore of the Senate upon recommendation of the President of the North Carolina Conference of District Attorneys;

(21) A representative from the North Carolina Association of County Commissioners appointed by the President Pro Tempore of the Senate upon recommendation of the Association;

(22) Two public members appointed by the President Pro Tempore of the Senate; and

(23) Five members of the Senate appointed by the President Pro Tempore of the Senate and five members of the House of Representatives appointed by the Speaker of the House of Representatives.

(c) All members of the Task Force are voting members. Vacancies in the appointed membership shall be filled by the appointing officer who made the initial appointment. The Speaker of the House of

§ 143-573 has a delayed repeal date. See notes.

Representatives shall call the first meeting no later than October 1, 1991. At the first meeting the members shall elect a chair who shall preside for the duration of the Task Force. (1991, c. 689, s. 233(a); 1991 (Reg. Sess., 1992), c. 900, s. 169(b); 1993, c. 321, s. 285(a); 1993 (Reg. Sess., 1994), c. 769, s. 27.8(d).)

Section Repealed Effective February 1, 1997. — This section is repealed, effective February 1, 1997, by Session Laws 1993, c. 321, s. 285(b), as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 27.8(b).

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, by c. 769, s. 27.8(d),effective July 1, 1994, in subsection (b), substituted "36 members" for "30 members" and twice substituted "ten" for "seven" in the first sentence, inserted "shall be nonvoting members and" in the second sentence, and twice substituted "five" for "two" in subdivision (23).

§ 143-574. (Repealed effective February 1, 1997) Task Force — duties.

Section Repealed Effective February 1, 1997. — This section is repealed, effective February 1, 1997, by Session Laws 1993, c. 321, s. 285(c), as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 27.8(b). For current version, see the main pamphlet.

§ 143-577. (Repealed effective February 1, 1997) Task Force — reports.

(a) The Task Force shall provide a preliminary report to the Governor and General Assembly, within the first week of the convening of the 1992 Session of the 1991 General Assembly. This preliminary report shall contain at least a summary of preliminary conclusions and recommendations for each of the Task Force's duties, as well as any other recommendations for changes to any law, rule, and policy that it has determined will promote the safety and well-being of children. Any recommendations of changes to law, rule, or policy shall be accompanied by specific legislative or policy proposals and detailed fiscal notes setting forth the costs to the State.

(b) The Task Force shall provide updated reports to the Governor and General Assembly within the first week of the convening of the 1993 General Assembly, within the first week of the convening of the 1994 Regular Session of the 1993 General Assembly, within the first week of the convening of the 1995 General Assembly, and within the first week of the convening of the 1996 Regular Session of the 1995 General Assembly. The Task Force shall provide a final report to the Governor and General Assembly within the first week of the convening of the 1997 General Assembly. The final report shall include final conclusions and recommendations for each of the Task Force's duties, as well as any other recommendations for changes to any law, rule, and policy that it has determined will promote the safety and well-being of children. Any recommendations of changes to law, rule, or policy shall be accompanied by specific legislative or

§ 143-577 has a delayed repeal date. See notes.

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policy proposals and detailed fiscal notes setting forth the costs to the State.

(c) After the Task Force provides its final report to the Governor and General Assembly, the Task Force shall cease to be in existence. (1991, c. 689, s. 233(a); 1991 (Reg. Sess., 1992), c. 900, s. 169(a); 1993 (Reg. Sess., 1994), c. 769, s. 27.8(a).)

Section Repealed Effective February 1, 1997. — This section is repealed, effective February 1, 1997, by Session Laws 1993, c. 321, s. 285(d), as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 27.8(b).

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvement Appropriations Act of 1994.'"

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment by c. 769, s. 27.8(a), effective July 1, 1994, in the first sentence of subsection (b), deleted "and" following "1993 General Assembly," inserted "Regular" following "1994" and added "within the first week of the convening of the 1995 General Assembly, and within the first week of the 1996 Regular Session of the 1995 General Assembly" at the end; and substituted "1997" for "1995" in the second sentence of subsection (b).

ARTICLE 65.

North Carolina Health Care Reform Commission.

§ 143-610. Definitions.

As used in this Article, unless the context clearly requires otherwise, the following definitions apply:

(1) "Community health plan" means any privately administered health service plan or any other mode of delivery of health care that is certified by a regional health plan purchasing cooperative and that provides health care services to eligible residents in exchange for a prescribed charge paid pursuant to the program of universal health coverage established by this Article.

(2) "Commission" means the North Carolina Health Care Reform Commission.

(3) "Eligible resident" means an individual who has been legally domiciled in this State for a period of 30 days. For purposes of this Article, legal domicile is established by living in this State and obtaining a North Carolina motor vehicle operator's license, registering to vote in North Carolina, or filing a North Carolina income tax return. A child is legally domiciled in this State if the child lives in this State and if at least one of the child's parents or the child's guardian is legally domiciled in this State for a period of 30 days. A person with a developmental disability or another disability which prevents the person from obtaining a North Carolina motor vehicle operator's license, registering to vote in North Carolina, or filing a North Carolina income tax return, is legally domiciled in this State by living in the State for 30 days.

(4) "Federal poverty income level" means the federal official poverty line, as defined by the Federal Office of Manage-

ment and Budget, based on Bureau of Census data, and revised annually by the Secretary of Health and Human Services pursuant to section 9902(2) of Title 42 of the United States Code.

(5) "Plan" means the North Carolina Health Plan described in this Article.

(6) "Regional health plan purchasing cooperative" means an organization established to administer the Plan in a geographic area of the State. (1993, c. 529, s. 1.2; 1995, c. 507, s. 23A.3(c).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, substituted "North Carolina Health Care Reform Commission" for "North Carolina Health Planning Commission" in subdivision (2).

Editor's Note. — Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 143-611. Commission established; members; terms of office; quorum; compensation.

(a) Establishment. — There is established the North Carolina Health Care Reform Commission with the powers and duties specified in this Article. The Commission shall be located within the Office of the Secretary, Department of Human Resources, for organizational, budgetary, and administrative purposes.

(b) Membership and Terms. — The Commission shall consist of 14 members, as follows:

(1) through (4) Repealed by Session Laws 1995, c. 507, s. 23A.3(a), effective July 1, 1995.

(5) through (7) Recodified as (b)(1a), (b)(2a), and (b)(3a) by Session Laws 1995, c. 507, s. 23A.3, effective July 1, 1995.

(1a) Six members appointed by the Speaker of the House of Representatives, at least two of whom are members of the House of Representatives at the time of appointment;

(2a) Six members appointed by the President Pro Tempore of the Senate, at least two of whom are members of the Senate at the time of the appointment; and

(3a) The following nonvoting members, ex officio:
  a. The Secretary of the Department of Environment, Health, and Natural Resources, or a designee thereof, and
  b. The Secretary of the Department of Human Resources, or a designee thereof.

Members shall serve two-year terms. Vacancies in membership shall be filled by the appointing authority in accordance with this section. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each appoint one of the Commission members to serve as cochair.

(c) Compensation. — The Commission members shall receive no salary as a result of serving on the Commission but shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable.

(d) Meetings. — The Commission shall be convened by the cochairs. Meetings shall be held as often as necessary, but not less than six times a year.

(e) Quorum. — A majority of the voting members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Commission shall be necessary for action to be taken by the Commission. (1993, c. 529, s. 1.2; 1995, c. 507, s. 23A.3(a), (c).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provision of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 fiscal biennium."

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1995, c. 507, s. 23A.3(b), provides: "New terms of members of the North Carolina Health Care Reform Commission commence August 1, 1995 and expire on July 31, 1997."

Effect of Amendments. — Session Laws 1995, c. 507, ss. 23A.3(a) and (c), effective July 1, 1995, substituted "North Carolina Health Care Reform Commission" for "North Carolina Health Planning Commission" in the first sentence of subsection (a); rewrote subsection (b); and rewrote the first sentence of subsection (d), which formerly read, "The Governor shall convene the Commission".

§ 143-612: Repealed by Session Laws 1995, c. 507, s. 23A.3(d), effective July 1, 1995.

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 143-612A. Powers and duties of the Commission.

(a) Administrative Powers. — The Commission shall have the following administrative powers:

(1) To appoint a director, who shall be exempt from the State Personnel Act, and to employ other staff as it deems necessary, subject to the State Personnel Act, and to fix their compensation;

(2) To enter into contracts to carry out the purposes of this Article;

(3) To conduct investigations and inquiries and compel the submission of information and records the Commission deems necessary; and

(4) To accept grants, contributions, devises, bequests, and gifts for the purpose of providing financial support to the Commission. Such funds shall be retained by the Commission.

(b) Monitoring. — The Commission shall monitor health care reform efforts in the State and shall report to the Governor and the General Assembly on the following:

(1) Cost-containment measures;

(2) Accessibility to health care in rural and medically underserved areas;

(3) Availability of affordable health insurance for small businesses, including the Health Care Purchasing Alliances, to determine if these are meeting the health insurance needs of small business employers and their employees;

(4) Efforts to increase the purchasing power of government health programs; and

(5) The number of persons who lack access to primary care providers.

(c) Study. — The Commission shall study the following issues and may recommend to the General Assembly actions to address these issues:

(1) The steps necessary to include the populations served by Medicaid, including a statement of any necessary federal waivers;

(2) The steps necessary to obtain an exemption from the federal Employee Retirement and Income Security Act (ERISA);

(3) Examine the roles of other existing publicly financed systems of health coverage such as Medicare, federal employee health benefits, health benefits for armed services members, the Veterans Administration, the CHAMPUS program (10 U.S.C. § 1071 et seq.), and any other health benefits currently mandated by State or federal law or funded by State agencies;

(4) The means by which the delivery of health care will ensure that the needs of special populations of eligible residents such as low-income persons, people living in rural and underserved areas, and people with disabilities and chronic or unusual medical needs will be met;

(5) The role of the existing county health care system in health care reform efforts;

(6) The appropriate means of financing medical education and medical research;

(7) The means by which North Carolina's need for long-term care services can best be met, including an examination of the appropriateness and availability of home- and community-based services;

(8) The impact on health care cost and efficiency of rule changes made by State and local government agencies pertaining to health care services. The study shall include the impact of the frequency of such rule changes;

(9) Privatization of administrative, clinical, and mental health functions performed by governmental agencies and entities, and the impact of regulation on the delivery of private health coverage and health services;

(10) The impact of federal budget decisions on underserved and underinsured populations;

(11) The need for additional primary care practitioners;

(12) The need for additional benefits and population-based services to be offered in the community, based on the established priorities for improving health status in the community;

(13) Incentives for increasing employer-based coverage;

(14) Trends in the numbers of uninsured and underinsured persons and the barriers to access by these persons;

(15) Ways to maintain emergency medical services when hospital beds are reconfigured; and

(16) Study effectiveness of different types of preventive health services.

(d) Other Duties. — The Commission shall do the following and shall report to the Governor and the General Assembly on the progress of these activities:

(1) Develop methods to ensure adequate primary care for all eligible residents and appropriate compensation for primary care services to achieve that end;
(2) Review and identify initiatives and incentives to enhance the practice of primary health care in rural areas of the State;
(3) Identify or develop incentives to encourage diversification in health care facilities in rural and other areas of the State; and
(4) Assess the impact of the locum tenens program; and
(5) Develop alternative ways of expanding coverage to uninsured persons.

(e) Notwithstanding any other provision in this Article or Article 68A of Chapter 58 of the General Statutes, the Commission may develop its own health care proposals or plans or make any other recommendations to the General Assembly.

(f) The Commission shall report to the General Assembly on or before April 1, 1996, on its duties and responsibilities under this section. (1995, c. 507, s. 23A.3(e).)

Editor's Note. — Session Laws 1995, c. 507, s. 28.13, made this section effective July 1, 1995.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 143-613. Medical education; primary care physicians and other providers.

(a) In recognition of North Carolina's need for primary care physicians, Bowman Gray School of Medicine and Duke University School of Medicine shall each prepare a plan with the goal of encouraging North Carolina residents to enter the primary care disciplines of general internal medicine, general pediatrics, family medicine, obstetrics/gynecology, and combined medicine/pediatrics and to strive to have at least fifty percent (50%) of North Carolina residents graduating from each school entering these disciplines. These schools of medicine shall present their plans to the Board of Governors of The University of North Carolina by April 15, 1996, and shall update and present their plans every two years thereafter. The Board of Governors shall report to the Joint Legislative Education Oversight Committee by May 15, 1996, and every two years thereafter on the status of these efforts to strengthen primary health care in North Carolina.

(b) The Board of Governors of The University of North Carolina shall set goals for the Schools of Medicine at the University of North Carolina at Chapel Hill and the School of Medicine at East Carolina University for increasing the percentage of graduates who enter residencies and careers in primary care. A minimum goal should be at least sixty percent (60%) of graduates entering primary care disciplines. Each school shall submit a plan with strategies to reach these goals of increasing the number of graduates entering primary care disciplines to the Board by April 15, 1996, and shall update and present the plans every two years thereafter. The Board of Governors shall report to the Joint Legislative Education Oversight Committee by May 15, 1996, and every two years thereafter on the status of these efforts to strengthen primary health care in North Carolina.

Primary care shall include the disciplines of family medicine, general pediatric medicine, general internal medicine, internal medicine/pediatrics, and obstetrics/gynecology.

(b1) The Board of Governors of The University of North Carolina shall set goals for State-operated health professional schools that offer training programs for licensure or certification of physician assistants, nurse practitioners, and nurse midwives for increasing the percentage of the graduates of those programs who enter clinical programs and careers in primary care. Each State-operated health professional school shall submit a plan with strategies for increasing the percentage to the Board by April 15, 1996, and shall update and present the plan every two years thereafter. The Board of Governors shall report to the Joint Legislative Education Oversight Committee by May 15, 1996, and every two years thereafter on the status of these efforts to strengthen primary health care in North Carolina.

(c) The Board of Governors of The University of North Carolina shall further initiate whatever changes are necessary on admissions, advising, curriculum, and other policies for State-operated medical schools and State-operated health professional schools to ensure that larger proportions of students seek residencies and clinical training in primary care disciplines. The Board shall work with the Area Health Education Centers and other entities, adopting whatever policies it considers necessary to ensure that residency and clinical training programs have sufficient residency and clinical positions for graduates in these primary care specialties. As used in this subsection, health professional schools are those schools or institutions that offer training for licensure or certification of physician assistants, nurse practitioners, and nurse midwives.

(d) The progress of the private and State-operated medical schools and State-operated health professional schools towards increasing the number and proportion of graduates entering primary care shall be monitored annually by the Board of Governors of The University of North Carolina. Monitoring data shall include (i) the entry of State-supported graduates into primary care residencies and clinical training programs, and (ii) the specialty practices by a physician and each midlevel provider who were State-supported graduates as of a date five years after graduation. The Board of Governors shall certify data on graduates, their residencies and clinical training programs, and subsequent careers by October 1 of each calendar year, beginning in October of 1995, to the Fiscal Research Division of the Legislative Services Office and to the Joint Legislative Education Oversight Committee.

(e) The information provided in subsection (d) of this section shall be made available to the Appropriations Committees of the General Assembly for their use in future funding decisions on medical and health professional education. (1993, c. 321, ss. 78(a1)-(e); c. 529, s. 1.3; c. 561, s. 10; 1995, c. 507, s. 23A.5.)

Editor's Note. —

Session Laws 1993, c. 529, s. 1.6, as amended by Session Laws 1995, c. 507, s. 23A.3(c), provides: "Of the funds appropriated to the Reserve for Health Care Initiatives in Chapter 321 of the 1993 Session Laws, the sum of one million five hundred thousand dollars ($1,500,000) for the 1993-94 fiscal year and the sum of one million five hundred thousand dollars ($1,500,000) for the 1994-95 fiscal year shall be used for the operation of the North Carolina Health Care Reform Commission and for other activities related to the duties and responsibilities of the Commission pursuant to this Act."

Session Laws 1993, c. 529, s. 1.4, as amended by Session Laws 1995, c. 507, s. 23A-(3), provides: "(a) It is the intent of the General Assembly that the North Carolina Health Care Reform Commission develop a Health Care Reform Plan and that a new commission be appointed in the future to oversee implementation of the Plan. The new Commission would be a seven-member panel appointed by the Governor, subject to confirmation by the General Assembly, and would be appointed at least six months prior to the Plan's effective date.

"(b) The North Carolina Health Care Reform Commission, in preparing for this transition, shall develop (i) a phased implementation program for the Plan to coincide with a mandate or anticipated mandate for universal coverage, a federal preemption for North Carolina, or the date established by the General Assembly after it has determined that it can implement a universal health care program within existing laws, and (ii) a phased implementation plan for insurance reforms. The Plan shall incorporate the following structure for implementation. Phases I and II are interim measures until the General Assembly enacts a universal health coverage plan. Phase III is to be implemented in accordance with G.S. 58-68-21(2).

"Phase I: The Small Employer Group Health Insurance Coverage Reform Act is expanded from employers with up to 25 employees to employers of up to 49 employees, pursuant to Chapter 408 of the 1993 Session Laws. Rating band restrictions for the individual market would also be instituted, to be phased in over a period of time.

"Phase II: The Small Employer Group Health Insurance Coverage Reform Act would be expanded to employers with up to 99 employees. Community rating would begin to be implemented, with incremental implementation of rating bands. All carriers would be required to implement community health plan qualifications.

"Phase III: Rating bands would be removed to fully implement adjusted community rating. Cost-containment measures would be implemented."

Session Laws 1995, c. 324, s. 1.1 provides : "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 15.1, provides:

"Funds appropriated in this act to the Board of Governors of The University of North Carolina for continuation of financial assistance to the medical schools of Duke University and Wake Forest University shall be disbursed on certifications of the respective schools of medicine that show the number of North Caroline residents as first-year, second-year, third-year, and fourth-year students in each medical school as of November 1, 1995, and November 1, 1996. Disbursement to Wake Forest University shall be made in the amount of eight thousand dollars ($8,000) for each medical student who is a North Carolina resident, one thousand dollars ($1,000) of which shall be placed by the school in a fund to be used to provide financial aid to needy North Carolina students who are enrolled in the medical school. The maximum aid given to any student from this fund in a given year may not exceed the amount of the difference in tuition and academic fees charged by the school and those charged at the School of Medicine at the University of North Carolina at Chapel Hill.

"Disbursement to Duke University shall be made in the amount of five thousand dollars ($5,000) for each medical student who is a North Carolina resident, five hundred dollars ($500,000) of which shall be placed by the school in a fund to be used to provide student financial aid to financially needy North Carolina students who are enrolled in the medical school. No individual student may be awarded assistance from this fund in excess of two thousand dollars ($2,000) each year. In addition to this basic disbursement for each year of the biennium, a disbursement of one thousand dollars ($1,000) shall be made for each medical student who is a North Carolina resident in the first-year, second-year, third-year, and fourth-year classes to the extent that enrollment of each of those classes exceeds 30 North Carolina students.

"The Board of Governors shall establish the criteria for determining the eligibility for financial aid of needy North Carolina students who are enrolled in the medical schools and shall review the grants or awards to eligible students. The Board of Governors shall adopt rules for determining which students are residents of North Carolina for the purposes of these programs. The Board shall also make any regulations as necessary to ensure that these funds are used directly for instruction in the medical programs of the schools and not for religious or other nonpublic purposes. The Board shall encourage the two schools to orient students towards primary care, consistent with the directives of G.S. 143-613(a). The two schools shall supply information necessary for the Board to comply with G.S. 143-613(d)."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provision of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 fiscal biennium."

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, in subsection (a) substituted "1996, and shall update and present their plans every two years thereafter" for "1994" in the second sentence, and "1996, and every two years thereafter" for "1994" in the last sentence; in subsection (b) substituted "1996, and shall update and present their plans every two years thereafter" for "1994" in the third sentence, and "1996, and every two years thereafter" for "1994" in the last sentence; added subsection (b1); in subsection (c), in the first sentence added "and State-operated health professional schools", deleted "medical" preceding "students", and added "and clinical training", in the second sentence added "and clinical training" preceding "programs", deleted "medical" preceding "residency", added "and clinical" preceding "positions", and deleted "medical school" preceding "graduates", and added the last sentence; in subsection (d), in the first sentence substituted "State-operated" for "public", and added "and State-operated health professional schools", in the second sentence deleted "medical" following "entry of State-supported", added "and clinical training programs", and added "and each midlevel provider who were State-supported graduates", and added "and clinical training programs" in the last sentence; and added "and health professional" in subsection (e).

ARTICLE 66.

Health Care Purchasing Alliance Act.

§ 143-621. Purpose and intent.

The purpose and intent of this Article is to increase the affordability, efficiency, and fairness of health care coverage for small employers.

This Article promotes the development of voluntary purchasing Alliances to provide affordable health care coverage for self-employed individuals and employees of participating small employers in the manner of large employer groups. The Alliances will allow members to benefit from the contracting expertise and the administrative savings that can result from the pooling of small employers and self-employed individuals.

These Alliances will make available through their contracting processes a choice of Accountable Health Carriers that arrange for quality health services in a cost-effective manner. This Article establishes rules for fair competition among competing Accountable Health Carriers. These rules include the offering of comparable benefits by competing Accountable Health Carriers, risk assessment, and risk adjustment to assure competition based on a fair allocation of risk among Accountable Health Carriers, and the providing of data that measures clinical outcomes and other valid areas of Accountable Health Carrier performance.

Carriers throughout the health care coverage market for small employers are required to use adjusted community rating, guarantee the continuity of coverage, adhere to limitations on the use of preexisting conditions, abolish individual medical underwriting, and follow rules limiting the use of participation requirements. (1993, c. 529, s. 3.1; 1995, c. 509, s. 86.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, inserted "care" preceding "coverage" in the first and fourth paragraphs; and substituted "This Article" for "The Article" in the second and third paragraphs.

§ 143-622. Definitions.

As used in this Article:

(1) "Accountable Health Carrier" means a carrier registered with the Board pursuant to G.S. 143-626.

(2) "Adjusted community rating" means a method used to develop carrier premiums which spreads financial risk across a large population and allows adjustments only for the following demographic factors: age, gender, number of family members covered, and geographic areas, as determined pursuant to G.S. 58-50-130(b).

(3) "Alliance" means a State-chartered, nonprofit organization that provides health insurance purchasing services to member small employers in a market area regarding qualified health care plans offered by Accountable Health Carriers established pursuant to G.S. 143-629.

(4) "Alliance Board" means the Alliance Board of Directors for a market area established pursuant to G.S. 143-627.

(5) "Antitrust laws" means federal and State laws intended to protect commerce from unlawful restraints, monopolies, and unfair business practices.

(6) "Board" means the State Health Plan Purchasing Alliance Board.

(7) "Carrier" means that as defined in G.S. 58-50-110(5).

(8) "Community sponsor" means an organization that assumes responsibility for serving as the host for an Alliance in a market area.

(9) "Dependent" means that as defined in G.S. 58-50-110(9).

(10) "Eligible employee" means that as defined in G.S. 58-50-110(10).

(11) "Employee enrollee" means an eligible employee or dependent of an eligible employee who is enrolled in a qualified health care plan.

(12) "Fund" means the State Health Plan Purchasing Alliance Fund established under G.S. 143-635.

(13) "Grievance procedure" means an established set of rules that specify a process for appeal of an organizational decision.

(14) "Health benefit plan" means that as defined in G.S. 58-50-110(11).

(15) "Late enrollee" means an eligible employee or a dependent of an eligible employee who requests enrollment in a qualified health care plan after the initial enrollment

period for a member small employer, provided the enrollment is consistent with the Alliance's rules for initial enrollment and provided that the initial enrollment period shall extend for at least 30 consecutive calendar days. However, an eligible employee or dependent shall not be considered a late enrollee if:

a. The individual was covered under a public or private health benefit plan that provided at least the minimum level of benefits in qualified health care plans established pursuant to G.S. 58-50-120 at the time the individual was eligible to enroll and either:
   1. Lost coverage under another health plan as a result of termination of employment, the termination of coverage under another health plan, the death of a spouse, or divorce and requests enrollment in a qualified health care plan within 30 days after termination of coverage; or
   2. Stated, in writing, during the enrollment period that coverage under another employer's health benefit plan was the reason for declining coverage;
b. The individual elects a different health plan offered through an Alliance during an open enrollment period;
c. An eligible employee requests enrollment within 30 days of becoming an employee of a member small employer;
d. A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan and the request for enrollment is made within 30 days after issuance of the court order; or
e. The individual or employee enrollee makes a request for enrollment of the spouse or child within 30 days of his or her marriage or the birth or adoption of a child.

(16) "Lowest cost plan" means the lowest cost qualified health care plan selected by a member small employer and offered to the employer's employee enrollees.

(17) "Market area" means a clearly defined, nonoverlapping, and exclusive geographical area determined by the Board for the purpose of defining the region in which an Alliance shall operate.

(18) "Member small employer" means a small employer who enrolls in an Alliance.

(19) "Preexisting condition provision" means that as defined in G.S. 58-50-110(17).

(20) "Premium" means that as defined in G.S. 58-50-110(18).

(21) "Qualified health care plans" means the basic or standard health care plans offered by an Accountable Health Carrier to member small employers and as authorized by the Small Employer Carrier Committee pursuant to G.S. 58-50-120 and one additional plan. This additional plan shall be strictly limited to medical benefits and shall not be instituted with any elements of dental benefits. For the purposes of this section, "medical" does not include any elements of life, property and casualty, or workers' compensation benefits.

(22) "Risk adjustment mechanism" means the process established pursuant to G.S. 143-633.

(23) "Self-employed individual" means that as defined in G.S. 58-50-110(21a).

(24) "Service area" means a geographic region in which a carrier is licensed to operate.

(25) "Small employer" means that as defined in G.S. 58-50-110(22). (1993, c. 529, s. 3.1; 1995, c. 238, s. 2; c. 509, s. 87.)

Editor's Note. — Session Laws 1995, c. 238, s. 5, provides in part that the Small Group Carrier Committee, the Department of Insurance, and the State Health Plan Purchasing Alliance Board shall report to the Joint Legislative Commission on Governmental Operations no later than January 1, 1997 on issues related to adjusted community ratings.

Effect of Amendments. — Session Laws 1995, c. 238, s. 2, effective June 13, 1995, in subdivision (21) added "and one additional plan" to the end of the first sentence, and added the second and third sentences.

Session Laws 1995, c. 509, s. 87, effective July 29, 1995, in subdivision (15)a.1., deleted "or" preceding "the death", and inserted a comma following "spouse".

§ 143-623. Health benefit plans subject to Article.

A health benefit plan is subject to this Article if it provides health benefits for small employers in accordance with the criteria set forth in G.S. 58-50-115 and is issued through an alliance pursuant to G.S. 143-628. (1993, c. 529, s. 3.1; 1993 (Reg. Sess., 1994), c. 569, s. 11.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective June 22, 1994, substituted "in accordance with the criteria set forth in G.S. 58-50-115 and is issued through an alliance pursuant to G.S. 143-628" for "and if any of the following conditions are met", and deleted the three conditions listed.

§ 143-625. Establishment of the Board; membership; terms; personnel.

(a) There is established the State Health Plan Purchasing Alliance Board. The Board shall be established within the Department of Administration for administrative, organizational, and budgetary purposes only. The Department of Administration shall provide administrative and staff support to the Board. The Department of Insurance shall provide technical assistance as requested by the Board.

(b) The Board shall consist of 11 members, as follows:

(1) Three appointed by the Governor, at least one of whom shall be an owner or manager of a member small employer of an Alliance operating in North Carolina; and at least one of whom shall be an employee enrollee of an Alliance operating in North Carolina;

(2) Three appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, in accordance with G.S. 120-121, at least one of whom shall be an owner or manager of a member small employer of an Alliance operating in North Carolina; and at least one of whom shall be an employee enrollee of an Alliance operating in North Carolina;

(3) Three appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, at least one of whom shall be

an owner or manager of a member small employer of an Alliance operating in North Carolina; and at least one of whom shall be an employee enrollee of an Alliance operating in North Carolina;

(4) The Lieutenant Governor or his or her representative; and

(5) The Commissioner of Insurance or his or her representative.

(c) Members of the Board who are not officers or employees of the State shall receive compensation of two hundred dollars ($200.00) for each day or part of a day of service plus reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Board who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rates specified in G.S. 138-6.

(d) Appointed members shall serve for four-year terms except that the initial terms of:

(1) Two members appointed by the Governor, two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and one member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, shall expire July 1, 1995; and

(2) One member appointed by the Governor, one member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, shall expire July 1, 1997.

(e) At the end of a term, a member shall continue to serve until a successor is appointed. A member who is appointed after a term has begun serves only for the remainder of the term and until a successor is appointed. A member who serves two consecutive full four-year terms shall not be reappointed until four years after completion of those terms. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

(f) The Board shall elect officers biennially. Officers shall serve no more than two consecutive terms in an office.

(g) The Board shall appoint an executive director who shall serve at the pleasure of the Board. The executive director shall administer the affairs of the Board. The executive director may employ and direct staff necessary to carry out the provisions of this Article. Staff of the Board shall be covered under the State Personnel Act.

(h) The Board shall meet as needed at the times and places it determines. Such meetings and procedures shall be governed by the procedures and policies set forth in the North Carolina Open Meetings Law, Article 33C of Chapter 143 of the General Statutes. A majority of the fully authorized membership of the Board is a quorum.

(i) No Board members or their spouses shall be employed by, affiliated with an agent of, or otherwise a representative of any carrier or health care provider.

(j) No individual shall be appointed to or remain a member of the Board if the individual, the individual's spouse, or the individual and spouse together, held securities or are otherwise the beneficiaries of securities worth ten thousand dollars ($10,000) or more at fair market value as of December 31 of the preceding year in a single health care business or aggregated among multiple health care businesses. For the purposes of this subsection, the term, "health care business":

(1) Includes an association, corporation, enterprise, joint venture, organization, partnership, proprietorship, trust, and every other business interest that provides or insures human health care.

(2) Does not include a widely held investment fund, regulated investment company, or pension or deferred compensation plan if neither the individual nor the individual's spouse has the ability to exercise control over the financial interests held by the fund.

(k) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member of the Board, or its employees or agents, for any action taken in good faith by them in the performance of their powers and duties as defined under G.S. 143-626. (1993, c. 529, s. 3.1; 1993 (Reg. Sess., 1994), c. 569, s. 12.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective June 22, 1994, added subsection (k).

§ 143-626. Duties of the Board.

The Board shall:

(1) Establish no less than four and no more than 12 market areas in this State. In establishing such market areas, the Board shall ensure that every location is a part of a market area. To the largest extent possible, the Board should consider metropolitan standard areas and other existing markets. The Board may redefine market areas where it determines there will be insufficient numbers of enrollees, health care providers, or qualifying Accountable Health Carriers to make such requirements feasible. Any such modifications are subject to annual review by the Board.

(2) Accept applications by carriers to qualify as Accountable Health Carriers, determine the eligibility of carriers to become Accountable Health Carriers according to criteria described in G.S. 143-629, designate carriers as Accountable Health Carriers, and approve one additional qualified health care plan to be offered to small employers beyond the basic and standard health care plans.

(3) Establish Alliances with community sponsors pursuant to G.S. 143-627 for each market area determined by the Board.

(4) Conduct annual reviews of the performance of each Alliance to ensure that the Alliance is in compliance with this Article. To assist the Board in its review, each Alliance shall submit data to the Board quarterly including, but not limited to, employer enrollment by employer size; industry sector; previous insurance status and number of employees within each insurance status; number of total eligible employers in the market area participating in the Alliance; number of insured lives by county and insured category, including employees, dependents and other insured categories, represented by Alliance members; profiles of potential

employer membership by county; premium ranges for each qualified health care plan for Alliance member categories; type and resolution of member grievances; surcharges; and Alliance financial statements. A summary of this annual review shall be provided to the General Assembly and each Alliance.

(5) Develop standard enrollment procedures to be used in enrolling small employers and their eligible employees.

(6) Establish conditions of participation for small employers and self-employed individuals which shall conform to the requirements of this Article and G.S. 58-50-125(d) and include, but not be limited to, the following:

a. Assurances that the member small employer is a valid small employer group and is not formed for the purpose of securing health benefits coverage. This assurance must include requirements that sole proprietors and self-employed individuals have been in business for a reasonable period of time as established by the Board, have provided filings to verify employment status, and have provided other evidence, in the Board's discretion, to ensure that the individual is working;

b. A member small employer who opts to pay seventy percent (70%) or more of the cost of coverage may choose to offer a single qualified health care plan to its eligible employees. Eligible employees of other member small employers shall have the choice of at least two qualified health care plans. All member small employers may offer the qualified health care plans of more than one Accountable Health Carrier. The Board and Alliances shall encourage all member small employers to consider offering more than one Accountable Health Carrier;

c. Minimum employer contribution requirements that shall be an amount not less than fifty percent (50%) of the premium for an employee's coverage of the lowest cost plan. The Alliance shall require that the employer contribute the same dollar amount for each employee regardless of the qualified health care plan chosen by the employee;

d. A mechanism that will provide for participation if an employer chooses not to participate but one hundred percent (100%) of the eligible employees who are not covered under a health benefit plan elect to purchase their coverage through the Alliance; and

e. Prepayment of premiums or other mechanisms to assure that payment will be made for coverage.

(7) Ensure that any small employer or any employee of a small employer who meets the requirements established by the Board pursuant to subdivision (6) of this section may purchase health care coverage through an Alliance.

(8) Assure compliance with this Article by Alliances, small employers, and employee enrollees.

(9) Have the authority to request carrier information about the financial condition of the carrier consistent with the financial information required to be submitted by the carrier to the Department of Insurance.

(10) Assure fair and affirmative marketing of the qualified health care plans consistent with standards established by the Department of Insurance, the Small Employer Carrier Committee, and G.S. 143-632.

(11) Adopt rules in compliance with Chapter 150B of the General Statutes as necessary to administer the provisions of this Article.

(12) Appoint advisory committees that shall include persons with expertise in health benefits management and representatives of Accountable Health Carriers.

(13) Develop uniform standards for the data that Alliances collect from Accountable Health Carriers. In formulating such standards, the Board shall strive for consistency with health care data collection activities underway in North Carolina and nationally. Any data collection requirements promulgated by the Board shall be based on a study of their feasibility and cost-effectiveness, including their consistency with national standards for electronic data interchange, and their necessity for supporting the evaluation of Accountable Health Carriers and their provider networks with respect to cost containment, quality, control of expensive technology, and customer satisfaction. All enrollee satisfaction surveys employed by Alliances shall be in a standardized format promulgated by the Board.

(14) Have the authority to sue or be sued, including taking action necessary for securing legal remedies on behalf of, or against Alliances, member small employers, or employee enrollees and dependents of those employees.

(15) Have the authority to receive and accept grants or funds from any public or private agency and receive and accept contributions from any source of money, property, labor, or any other thing of value.

(16) Develop and implement standardized forms for use by Accountable Health Carriers in conformance with applicable national standards.

(17) Review, and limit if necessary, surcharges charged by each Alliance for administrative costs.

(18) Develop guidelines for any authorized marketing materials to be used in providing member small employers and their eligible employees with information regarding Accountable Health Carriers and their respective qualified health care plans in accordance with G.S. 143-632. Such guidelines shall be consistent with standards established by the Department of Insurance and the Small Employer Carrier Committee.

(19) Develop grievance procedures to be used in resolving disputes between member small employers and Alliances. A member small employer, Alliance or Accountable Health Carrier may appeal to the Board any grievance that is not resolved.

(20) Receive, review, and act on appeals of grievances not resolved.

(21) Analyze information collected from Accountable Health Carriers and other sources and report findings that assist consumers, Alliances, Accountable Health Carriers, or health care providers in improving the delivery or purchase of cost-effective health care.

(22) Report annually on the operation of the Board to the Joint Legislative Commission on Governmental Operations and the Governor. (1993, c. 529, s. 3.1; 1995, c. 238, s. 3.)

Editor's Note. — Session Laws 1995, c. 238, s. 5, provides in part that the Small Group Carrier Committee, the Department of Insurance, and the State Health Plan Purchasing Alliance Board shall report to the Joint Legislative Commission on Governmental Operations no later than January 1, 1997 on issues related to adjusted community ratings.

Effect of Amendments. — The 1995 amendment, effective June 13, 1995, added "and approve one additional qualified health care plan to be offered to small employers beyond the basic and standard health care plans" to the end of subdivision (2) and made a related change.

§ 143-627. Alliances authorized.

(a) The Board is authorized to create a single Alliance within each designated market area for the benefit of its member small employers. Each Alliance shall be operated as a State-chartered, nonprofit private organization.

(b) Each Alliance shall operate under the supervision of an Alliance Board of Directors, which shall consist of 11 members. The majority of members on each Alliance Board shall be small employers.

(1) The Board shall initially appoint six members for a term of two years. The community sponsor shall initially appoint five members for a term of two years. In so doing, the Board and community sponsor shall consider, among other things, whether all member small employers are fairly represented and assure that a majority of the Alliance Board shall be small employers.

(2) Subsequent members of the Alliance Board of Directors shall be elected pursuant to the Alliance Board's bylaws.

(c) Each Alliance Board shall adopt bylaws that shall include a procedure for the election of Alliance Board members by the Alliance's member small employers.

(d) Of the initially elected members of each Alliance Board, six members shall be designated to serve two-year terms and the remaining five members shall serve four-year terms. Thereafter, the term of an elected member shall be four years.

(e) Vacancies on an Alliance Board shall be filled for the remaining period of the term by a majority vote of the remaining Board members. A member appointed to fill a vacancy may serve for the remainder of the term and until a qualified successor is elected for a new term.

(f) A member who serves two consecutive full four-year terms shall not be reelected for four years after completion of those terms.

(g) Members of the Alliance Board shall be bound by the financial interest restrictions set forth for Board members in G.S. 143-625(i) and (j).

(h) The Alliance Board shall elect officers from among its members every two years. Officers shall not serve more than two consecutive terms in an office.

(i) The Alliance Board shall meet at times and places as it determines necessary to operate the Alliance in accordance with this section and G.S. 143-628. Such meetings shall be governed by the procedures and policies set forth by the North Carolina Open Meetings Law, Article 33C of Chapter 143 of the General Statutes.

(j) There shall be no liability on the part of, and no cause of action of any nature shall arise against any member of the Alliance Board, or its employees or agents, for any action taken in good faith by them in the performance of their powers and duties as defined under G.S. 143-628.

(k) The Alliance Board shall have the powers and duties regarding operation of the Alliance set forth in G.S. 143-628. (1993, c. 529, s. 3.1; 1995, c. 509, ss. 88-90.)

Effect of Amendments. — Session Laws 1995, c. 509, ss. 88, 89, and 90, effective July 29, 1995, substituted "serve" for "have" in subsection (d); inserted "appointed" in the second sentence of subsection (e); and substituted "policies" for "polices" in subsection (i).

§ 143-628. Powers and duties of the Health Plan Purchasing Alliance.

An Alliance shall have the following powers and duties:

(1) Enter into contracts with Accountable Health Carriers for the provision of qualified health care plans for members of the Alliance pursuant to G.S. 143-629. Each Alliance shall contract with all Accountable Health Carriers which offer qualified health care plans operating in its market area and apply to serve member small employers;

(2) Enter into contracts with member small employers pursuant to G.S. 143-630;

(3) Maintain eligibility records as appropriate to carry out the functions of this Article;

(4) Transmit enrollment and eligibility information to Accountable Health Carriers on a timely basis;

(5) Establish procedures for collection of premiums from member small employers, including the share of premiums paid by employee enrollees pursuant to G.S. 143-630;

(6) Pay contracted rates to Accountable Health Carriers on a monthly basis or as otherwise mutually agreed pursuant to G.S. 143-631;

(7) Impose annual surcharges established at the beginning of the fiscal year to be paid monthly by member small employers for necessary costs incurred in connection with the operation of the Alliance. The amount of annual surcharges shall cover any default on insurer premium payments by member small employers;

(8) Provide that in the event a member small employer terminates coverage purchased through the Alliance, the former member small employer shall be ineligible to purchase a qualified health care plan through the Alliance for a period of two years, except as permitted by the Alliance Board and the Board for good cause;

(9) Contract, as authorized by the Alliance Board of Directors, with a qualified third party for any service necessary to carry out the powers and duties as defined in this section, including contracts with agents to assist in contracting with Accountable Health Carriers and small employers and to assist the Alliance in undertaking activities necessary to administer the Alliance, such as marketing and publicizing the availability of the qualified health care plans;

(10) Provide to member small employers clear, standardized information on each Accountable Health Carrier and qualified health care plans offered by each Accountable Health Carrier, including information on price, enrollee costs, quality, patient satisfaction, enrollment, and enrollee responsibilities and obligations; and provide qualified health care plan comparison sheets in accordance with Board rules to be used in providing members and their employees with information regarding coverage that may be obtained through the Accountable Health Carriers;

(11) Appoint an executive director to serve as the chief operating officer of the Alliance, who may employ other staff as needed to administer the Alliance. The executive director shall serve at the pleasure of the Alliance Board;

(12) Establish advisory boards as necessary to assist with carrying out the duties established pursuant to this section;

(13) Establish administrative and accounting procedures for operating the Alliance, providing services to member small employers and employee enrollees, and preparing an annual budget;

(14) Prepare annual reports on the operations of the Alliance, including program and financial operations as required by the Board, and provide for annual internal and independent audits;

(15) Sue or be sued, including taking any legal actions necessary or proper for recovering any penalties for or on behalf of the Alliance;

(16) Maintain records and submit reports to the Board as required; and

(17) Accept and expend funds received through grants, appropriations, or other appropriate and lawful means. (1993, c. 529, s. 3.1; 1995, c. 509, ss. 91, 92.)

Effect of Amendments. — Session Laws 1995, c. 509, ss. 91 and 92, effective July 29, 1995, inserted "member" in subdivision (2); and substituted "employers" for "employer" at the end of subdivision (7).

§ 143-629. Accountable health carriers.

(a) By July 1, 1994, the Board shall establish a process whereby a carrier that fulfills the qualifications of subsection (b) of this section shall be designated as an Accountable Health Carrier.

(b) In order to be eligible to be designated as an Accountable Health Carrier, a carrier must be able to demonstrate the following operating characteristics to the Board:

(1) Licensure and in good standing with the Department of Insurance;

(2) Capacity to administer the qualified health care plans;

(3) In the case of a carrier with a contractual obligation to provide or arrange for the covered health services, the ability to provide enrollees with adequate access to covered services within the carrier's service area;

(4) Grievance procedures, including the ability to respond to enrollees' calls, questions, and complaints;

(5) Established utilization management procedures;

(6) Ability to arrange and pay for the appropriate level and type of health care services;

(7) Ability to monitor and evaluate the quality and cost-effectiveness of care;
(8) Ability to assure enrollees with adequate numbers and types of health care providers;
(9) Ability to provide information on enrollee satisfaction based on standard surveys prescribed by the Board; and
(10) Ability to provide information on the types of treatments and outcomes with respect to the clinical health, functional status, and well-being of the enrollees based on standard data elements prescribed by the Board.

Carriers receiving accreditation by nationally recognized accreditation organizations, including, but not limited to, the National Committee on Quality Assurance (NCQA), the Utilization Review Accreditation Commission (URAC), Joint Commission on Accreditation of Health Care Organizations (JCAHO), or qualification by federal agencies, shall be deemed to be in compliance with the requirements of subdivisions (2) through (10) of this subsection as they pertain to the relevant accreditation activities of the organization.

(c) After notice and hearing, the Board may suspend or revoke the designation as an Accountable Health Carrier of any carrier that fails to maintain compliance with the requirements listed in subsections (b), (d), or (e) of this section.

(d) Each Accountable Health Carrier shall:
(1) Offer qualified health care plans;
(2) Provide for the collection and reporting to the Board and to the appropriate Alliance of information on the performance of Accountable Health Carriers regarding the effectiveness and outcomes in providing selected services; provided, however, that data reporting requirements adopted by the Board shall be consistent with the method of operation of Accountable Health Carriers, shall be consistent with national standards where available, and shall not impose an unreasonable cost for compliance;
(3) Not deny, limit, or condition coverage under qualified health care plans based on health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability of an eligible employee or dependent pursuant to the provisions of this Article;
(4) Establish premium rates for each qualified health care plan pursuant to the adjusted community rating method described in G.S. 58-50-130(b);
(5) Comply with all rules regarding rating, underwriting, claims handling, sales, solicitation, licensing, unfair trade practices and other provisions in this Article and Chapter 58 of the General Statutes;
(6) Issue a qualified health care plan to any member small employer that elects to be covered under a qualified health care plan offered by an Accountable Health Carrier during the open enrollment period established pursuant to subsection (e) of this section;
(7) Renew each qualified health care plan with respect to any member small employer except in the following cases:
  a. Nonpayment of the required premiums;
  b. Fraud or material misrepresentation of the member small employer, or the employee enrollee, or a depen-

dent of the member small employer or the employee enrollee;

c. Noncompliance by a small employer with requirements regarding employer contribution or participation as required by the Board;

d. Repeated misuse of a provider network provision including, but not limited to, unreasonable refusal of the enrollee to follow a prescribed course of treatment, or violation of reasonable policies of an Accountable Health Carrier;

e. Election by the Accountable Health Carrier to terminate its contract with an Alliance. In such a case, the Accountable Health Carrier shall:

1. Provide advance notice of its decision in accordance with this sub-subdivision to the Alliance and to the Board;

2. Provide notice of the decision at least 180 days prior to the nonrenewal of any qualified health care plan to the enrollees. Except as provided in sub- subdivision f. of this subdivision an Accountable Health Carrier that elects not to renew a qualified health care plan with an Alliance shall be prohibited from writing new business with the Alliance for a period of three years from the date of notice to the Alliance or until the Alliance invites the carrier to renew participation, whichever is sooner; and

f. Determination by an Alliance, subject to review by the Board, that continuation of coverage would not be in the best interest of the employee enrollees and member small employers or would impair the Accountable Health Carrier's ability to meet its contractual obligations. In this instance, the Alliance shall assist affected employee enrollees in finding replacement coverage;

(8) Provide a procedure for addressing grievances that arise between the Accountable Health Carrier and the Alliance, member small employers, or employee enrollees.

(e) Each Accountable Health Carrier shall offer an open enrollment period to small employers at the anniversary date of the member small employers' qualified health care plan. The open enrollment period shall be at least 30 consecutive calendar days. Member small employers may choose from the Accountable Health Carriers selected from the qualified health care plans that are offered in the market area in which they reside. An Accountable Health Carrier shall not be required to offer coverage or accept enrollments if:

(1) The eligible employee or dependent does not reside within the Accountable Health Carrier's approved service area;

(2) An Accountable Health Carrier provides 90 days' prior notice that it will not have the capacity to deliver service adequately in a market area to additional enrollees because of its obligations to existing groups and enrollees; or

(3) The Commissioner of Insurance determines that the acceptance of an application or applications would place an Accountable Health Carrier in a financially impaired condition.

(f) An Accountable Health Carrier that cannot offer coverage pursuant to subdivision (2) of subsection (e) of this section shall not offer coverage to or accept applications from a new employer group or an individual until the later of 90 days following such refusal or the date on which the Accountable Health Carrier notifies the Alliance and the Board that it has regained capacity to deliver services to eligible employees and their dependents in the service area. An Accountable Health Carrier that cannot offer coverage pursuant to subdivision (3) of subsection (e) of this section shall not offer coverage or accept applications for any individual or employer group until a determination by the Commissioner of Insurance that acceptance of an application will not put the Accountable Health Carrier in a financially impaired condition.

(g) Nothing in this Article or any other provision of the General Statutes shall prohibit an Accountable Health Carrier from providing a qualified health care plan in an Alliance through a managed-care system, and from contracting with particular health care providers or types, classes, or categories of health care providers. (1993, c. 529, s. 3.1; 1995, c. 509, ss. 93, 94.)

Effect of Amendments. — Session Laws 1995, c. 509, ss. 93 and 94, effective July 29, 1995, substituted a semicolon for a period at the end of subdivision (d)(5); substituted a period for a semicolon at the end of subdivision (d)(8); and deleted "and" from the end of subdivision (d)(8).

§ 143-632. Marketing qualified health care plans.

(a) Each Alliance shall use efficient and standardized means to notify small employers of the availability of sponsored health coverage through the Alliance.

(b) Each Alliance shall make available to member small employers marketing materials accurately summarizing the benefit plans, rates, cost, and accreditation information that its Accountable Health Carriers offer through the Alliance.

(c) If authorized by the Board, an Accountable Health Carrier may provide, directly or through an agent, broker, or contractor, marketing material relating to health plans offered through the Alliance. Accountable Health Carriers shall not need authorization from an Alliance for advertisement to the public at large through the means of mass media.

(d) The Board shall require the use of agents or brokers licensed by the North Carolina Department of Insurance to assist small employers in obtaining coverage through an Alliance. All licensed agents or brokers shall be eligible to market and sell coverage through an Alliance. An Accountable Health Carrier shall not vary compensation or commissions to such agents or brokers based, directly or indirectly, on the anticipated or actual claims experience or health status associated with particular small employers to which each plan is sold.

(e) No Accountable Health Carrier, agent of an Accountable Health Carrier or independent insurance agent shall engage, directly or indirectly, in any activity of marketing practices that would encourage member small employers or eligible employees to:

(1) Refrain from enrolling in the Accountable Health Carrier because of their health status or claim experience; or

(2) Seek coverage from other Accountable Health Carriers because of their health status or claim experience.

(f) An Alliance shall notify the Board of any marketing practices or materials that it finds contrary to the fair and affirmative marketing requirements of this Article. Furthermore, the Board shall monitor compliance with this section, including the conduct of Accountable Health Carriers and their agents, brokers, or contractors, and shall report to the Department of Insurance any unfair trade practices and misleading or unfair conduct that has been reported to the Board by Alliances, agents, consumers, or any other individual. The Department of Insurance shall investigate all reports and, upon a finding of noncompliance with this section or of unfair and misleading practices, shall take action against violators as permitted under Chapter 58 of the General Statutes or this Article. The Board shall forward all reports of cases of abuse to the Department of Insurance for investigation. (1993, c. 529, s. 3.1; 1995, c. 238, s. 4; c. 509, s. 95.)

Editor's Note. — Session Laws 1995, c. 238, s. 5, provides in part that the Small Group Carrier Committee, the Department of Insurance, and the State Health Plan Purchasing Alliance Board shall report to the Joint Legislative Commission on Governmental Operations no later than January 1, 1997 on issues related to adjusted community ratings.

Effect of Amendments. — Session Laws 1995, c. 238, s. 4, effective June 13, 1995, in subsection (d) substituted the first two sentences for "Nothing in this section shall be construed to or explicitly prohibit an Alliance or Accountable Health Carrier from using the services of an agent or broker in order to assist in marketing."

Session Laws 1995, c. 509, s. 95, effective July 29, 1995, substituted "of abuse" for "or abuse" in the last sentence of subsection (f).

§§ 143-637 through 143-639: Reserved for future codification purposes.

ARTICLE 67.

First Flight Centennial Commission.

§ 143-640. Commission established; purpose; members; terms of office; quorum; compensation; termination.

(a) Establishment. — There is established the First Flight Centennial Commission. The Commission shall be located within the Department of Cultural Resources for organizational, budgetary, and administrative purposes.

(b) Purpose. — The purpose of the Commission is to develop and plan activities to commemorate the centennial of the first successful manned, controlled, heavier-than-air, powered flight (in this Article referred to as "the First Flight") and other historical events related to the development of powered flight.

(c) Membership. — The Commission shall consist of 26 members, as follows:

(1) Four persons appointed by the Governor.
(2) Four persons appointed by the President Pro Tempore of the Senate.
(3) Four persons appointed by the Speaker of the House of Representatives.
(4) The following persons or their designees, ex officio:
    a. The Governor.

b. The President Pro Tempore of the Senate.
c. The Speaker of the House of Representatives.
d. The United States Senators from this State.
e. The member of the United States House of Representatives for the Third Congressional District.
f. The Governor of the State of Ohio.
g. The Secretary of the Department of Cultural Resources.
h. The Superintendent of the Cape Hatteras National Seashore of the United States National Park Service.
i. The chair of the Centennial of Flight Commemoration Commission.
j. The President of the First Flight Society.
k. The chair of the Dare County Board of Commissioners.
l. The Mayor of the Town of Kill Devil Hills.
m. The chair of the Dare County Tourism Board.

The members appointed to the First Flight Centennial Commission shall be chosen from among individuals who have the ability and commitment to promote and fulfill the purposes of the Commission, including individuals who have demonstrated expertise in the fields of aeronautics, aerospace science, or history, who have contributed to the development of the fields of aeronautics or aerospace science, or who have demonstrated a commitment to serving the public.

(d) Terms. — Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

(1) The Governor shall initially appoint two members for a term of two years and two members for a term of three years.
(2) The President Pro Tempore of the Senate shall initially appoint two members for a term of two years and two members for a term of three years.
(3) The Speaker of the House of Representatives shall initially appoint two members for a term of two years and two members for a term of three years.

Initial terms shall commence on July 1, 1994.

(e) Chair. — The chair shall be appointed biennially by the Governor from among the membership of the Commission. The initial term shall commence on July 1, 1994.

(f) Vacancies. — A vacancy in the Commission or as chair of the Commission resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made and the term shall be for the balance of the unexpired term.

(g) Compensation. — The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. When approved by the Commission, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(h) Removal. — Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) Meetings. — The chair shall convene the Commission. Meetings shall be held as often as necessary, but not less than four times a year.

(j) Quorum. — A majority of the members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Commission shall be necessary for action to be taken by the Commission.

(k) Termination of Commission. — The Commission shall terminate June 30, 2004, which is six months after the 100th anniversary of the First Flight. (1993 (Reg. Sess., 1994), c. 777, s. 7(a).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 777, s. 10, makes this Article effective upon ratification. The act was ratified July 17, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 777, which enacted this Article, in s. 7(b) provides: "The Department of Cultural Resources shall use funds within its budget for the 1994-95 fiscal year, in the amount of seventy-five thousand dollars ($75,000) for the establishment and operation of the First Flight Centennial Commission during the term of the Commission."

§ 143-641. Powers and duties of the Commission.

(a) Powers and Duties. — The Commission shall have the following powers and duties:

(1) To plan and develop activities appropriate to commemorate the centennial of the First Flight, including the coordination of activities throughout the State and nation.

(2) To coordinate with the national Centennial of Flight Commemoration Commission and the 2003 Fund Commission of Ohio in planning and promoting commemorative events and activities.

(3) To appoint a director, who shall be exempt from the State Personnel Act, to employ other staff as it deems necessary, subject to the State Personnel Act, and to fix their compensation.

(4) To adopt bylaws by a majority vote of the Commission.

(5) To accept grants, contributions, devises, bequests, gifts, and services for the purpose of providing support to the Commission. The funds and property shall be retained by the Commission, and the Commission shall prescribe rules under which the Commission may accept donations of money, property, or personal services, and determine the value of donations of property or personal services.

(6) To design, seek clearance for, and register with the Secretary of State a logo as the official emblem of the First Flight celebration, in coordination with the federal advisory commission. The Commission shall issue rules regarding the use of the logo.

(b) Commemoration Activities. — In planning and implementing appropriate activities to commemorate the centennial of the First Flight, the Commission shall give due consideration to:

(1) The historical setting in which the First Flight of the Wright Brothers took place.

(2) The contribution of powered flight to the development of transportation worldwide.

(3) The contribution that powered flight has made to worldwide trade and the economic development of the United States and all nations.

(4) The contribution that powered flight has made to world peace and security.

(5) The need to educate the public regarding the research and development of powered flight, and to acknowledge the

development of aeronautics, aerospace science, and the aerospace industry, including the development of the glider and Orville and Wilbur Wright's contribution to the development of the glider.

(6) The development of aerospace science and the aerospace industry since the First Flight, including the development of space exploration.

(7) The importance of activities to commemorate the First Flight and to honor Orville and Wilbur Wright and their contribution to powered flight.

(8) The need to expand the facilities of the Wright Brothers National Memorial to honor Orville and Wilbur Wright and to educate the public regarding the development of powered flight and the development of aeronautics and aerospace science since the First Flight.

(9) The commitment and efforts of the First Flight Society and the National Park Service to preserving the Wright Brothers National Memorial and to honoring Orville and Wilbur Wright on the centennial of the First Flight.

(c) Contract Authority. — The Commission may procure supplies, services, and property as appropriate, and may enter into contracts, leases, or other legal agreements to carry out the purposes of this Article. All contracts, leases, or legal agreements entered into by the Commission shall terminate on the date of termination of the Commission. Termination shall not affect any disputes or causes of action of the Commission that arise before the date of termination, and the Department of Cultural Resources may prosecute or defend any causes of action arising before the date of termination. All property acquired by the Commission that remains in the possession of the Commission on the date of termination shall become the property of the Department of Cultural Resources. (1993 (Reg. Sess., 1994), c. 777, s. 7(a).)

§ 143-642. Assignment of property; offices.

(a) Assignment of Property. — Upon request of the Commission, the head of any State agency may assign property, equipment, and personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Article. Assignments under this subsection shall be without reimbursement by the Commission to the agency from which the assignment was made. Property and equipment that remains in the possession of the Commission on the date of the termination of the Commission shall revert to the agency from which the property was acquired.

(b) Office Space. — The Department of Cultural Resources shall provide office space in Raleigh for use as offices by the First Flight Centennial Commission, and the Department of Cultural Resources shall receive no reimbursement from the Commission for the use of the property during the life of the Commission. (1993 (Reg. Sess., 1994), c. 777, s. 7(a).)

§ 143-643. Commission reports.

(a) Annual Report. — Before July 1, 1995, the Commission shall submit to the General Assembly a comprehensive report incorporating specific recommendations of the Commission for commemoration of the First Flight and other historical events related to the development of powered flight. After the initial report, the Commission shall submit a report to the General Assembly within 30 days of the convening of each Regular Session of the General Assembly until the Commission terminates. The report shall include:

(1) Recommendations for appropriate activities for the commemoration, including:
  a. Publications, both printed and electronic, of books, periodicals, films, videotapes, and other promotional and educational materials.
  b. Scholarly projects, conferences, lectures, seminars, and programs.
  c. Libraries, exhibits, and museums.
  d. Competitions and awards for historical, scholarly, artistic, and other works and projects related to the centennial.
  e. Ceremonies and celebrations, including a calendar of major activities, commemorating the centennial and other related historical events and achievements.
(2) Recommendations for legislation and administrative action to promote and develop the commemoration.
(3) An accounting of funds received and expended.

(b) Final Report. — The Commission shall submit a final report to the General Assembly no later than June 30, 2004. The final report shall include:

(1) A summary of the activities of the Commission.
(2) A final accounting of funds received and expended by the Commission.
(3) Recommendations concerning the disposition of historically significant property donated to or acquired by the Commission. (1993 (Reg. Sess., 1994), c. 777, s. 7(a).)

§§ 143-644 through 143-649: Reserved for future codification purposes.

ARTICLE 68.

North Carolina State Boxing Commission.

§ 143-650. Legislative findings and declarations.

The General Assembly finds and declares to be the public policy of this State that it is in the best interest of the public and of boxing that boxing should be subject to an effective and efficient system of strict control and regulation in order to:

(1) Protect the safety and well-being of participants in boxing; and
(2) Promote the public confidence and trust in the regulatory process and the conduct of boxing.

To further the public confidence and trust, the provisions of this Article are designed to regulate all persons, practices, and associations related to the operation of any live boxing event, performance, or contest held in North Carolina. (1995, c. 499, s. 1.)

Editor's Note. — Session Laws 1995, c. 499, s. 2, made this Article effective January 1, 1996.

§ 143-651. Definitions.

As used in this Article:

(1) "Amateur" means a person who has never received or competed for any purse or other article or thing of value for participating in a match.

(2) "Announcer" means any person who engages in the act of announcing a boxing match.

(3) "Boxer" means any person who engages as a participant in a boxing match.

(4) "Boxing match" means a match where the participants engage in the use of boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or technical knockout (TKO), and shall include kickboxing matches as defined in this section.

(5) "Commission" means the North Carolina State Boxing Commission.

(6) "Contest" means a boxing match in which the participants strive earnestly to win.

(7) "Contestant" means any person who engages as a participant in a boxing match.

(8) "Exhibition" means a boxing match where the participants display their boxing skills and technique without necessarily striving to win.

(9) "Judge" means a person who has a vote in determining the winner of any match or contest.

(10) "Kickboxer" means any person who engages as a participant in a kickboxing match.

(11) "Kickboxing match" means a match in which the participants engage in martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).

(12) "Licensee" means any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.

(13) "Manager" means any person, including an officer of a corporate manager and a managing partner of a partnership manager, who controls or administers the boxing affairs of any contestant, and who:

a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive monetary or other compensation for his services, without regard to the sources of the compensation, except that the term "manager" shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to his representing the interests of a professional boxer as his client;

b. Directs or controls the professional boxing activities of any professional boxer; or
c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.

(14) "Match" means any boxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(15) "Matchmaker" means a person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.

(16) "Natural person" means an individual.

(17) "Participant" means any person who engages in a match or exhibition and performs as a boxer.

(18) "Person" means an individual, group of individuals, business, corporation, partnership, or any other individual or collective entity.

(19) "Physician" means an individual licensed to practice medicine in this State.

(20) "Professional" means any person who has received or competed for any purse or other article or thing of value for participating in a boxing match.

(21) "Promoter" means any person, including an officer of a corporate promoter and a managing partner of a partnership promoter, who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.

(22) "Referee" means the official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.

(23) "Ring official" means any person who performs an official function for the duration of a match.

(24) "Second" means any person who will work or be present in the corner of a participant for the duration of a match.

(25) "Timekeeper" means any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.

(26) "Ultimate warrior match" means a match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article. (1995, c. 499, s. 1.)

§ 143-652. State Boxing Commission.

(a) Creation. — The North Carolina State Boxing Commission is created within the Department of the Secretary of State to regulate live boxing matches, whether professional or amateur, in North Carolina. The Commission shall consist of five voting members and two advisory members. All the members shall be residents of North Carolina. The members shall be appointed as follows:

(1) One voting member shall be appointed by the Governor for an initial term of two years.

(2) One voting member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121.

(3) One voting member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year.

(4) Two voting members shall be appointed by the Secretary of State. One shall serve for an initial term of three years, and the other shall serve for an initial term of two years.

(5) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

(6) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

The two nonvoting advisory members shall advise the Commission on matters concerning the health and physical condition of boxers and health issues relating to the conduct of exhibitions and boxing matches. They may prepare and submit to the Commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Terms for all members of the Commission except for the initial appointments shall be for three years.

The Secretary of State shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Secretary of State for cause. Each member before entering upon the duties of a member shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of the Secretary of State.

(b) Vacancies. — Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. Vacancies for members appointed by the General Assembly shall be filled in accordance with G.S. 120- 122. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. — Meetings of the Commission shall be called by the chair or by any two members of the Commission, and meetings shall be held at least quarterly. Any three members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists. Any or all members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in the meeting by this means is deemed to be present in person at the meeting.

(d) Rule-Making Authority of the Commission. — The Commission shall have the exclusive authority to issue rules for the regulation of the conduct, promotion, and performances of live boxing matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.
(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.
(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.

(e) Compensation. — None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. — The Secretary of State shall provide staff assistance to the Commission. (1995, c. 499, s. 1.)

§ 143-653. Ultimate warrior matches prohibited.

Ultimate warrior matches, whether the participants are professionals or amateurs, are prohibited. No person shall promote, conduct, or engage in ultimate warrior matches. This section shall not preclude boxing and kickboxing as regulated in this Article or professional wrestling. (1995, c. 499, s. 1.)

§ 143-654. Licensing and permitting.

(a) License and Permit Required. — It is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this State unless the promoter has a permit issued under this Article to do so. The Commission has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. — A license issued under this Article must be renewed annually on or before January 1. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Commission the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Commission may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Commission deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Commission.

(c) Surety Bond. — An applicant for a promoter's license must submit, in addition to any other forms, documents, or exhibits, a surety bond in an amount to be no less than five thousand dollars ($5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the Commission. All surety bonds shall be upon forms approved by the Secretary of State and supplied by the Commission.

(d) Permit. — A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Commission the appropriate nonrefundable fee and any forms or documents the Commission may require. (1995, c. 499, s. 1.)

§ 143-655. Fees; State Boxing Commission Revenue Account.

(a) License Fees. — The Commission shall collect the following license fees:

Announcer	$50.00
Contestant	$25.00
Judge	$50.00
Manager	$100.00
Matchmaker	$200.00
Promoter	$300.00
Referee	$50.00
Timekeeper	$50.00
Second	$25.00.

The annual license renewal fees shall not exceed the initial license fees.

(b) Permit Fees. — The Commission may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 — 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing Commission Revenue Account. — There is created the State Boxing Commission Revenue Account within the Department of the Secretary of State. Monies collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article. (1995, c. 499, s. 1.)

§ 143-656. Contracts and financial arrangements.

Any contract between a boxer and any other licensee and any contract involving a boxing match or exhibition held or to be held in this State must meet the requirements of administrative rules as set forth by the Commission. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing. (1995, c. 499, s. 1.)

§ 143-657. Kickboxing.

In addition to the other applicable provisions of this Article, a kickboxing match shall be conducted pursuant to the rules and regulations in effect for the Professional Karate Association, the International Sport Karate Association, or for any other professional organizations approved by the Commission. (1995, c. 499, s. 1.)

§ 143-658. Violations.

(a) Civil Penalties. — The Commission may issue an order against a licensee or or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

(b) Criminal Penalties. — A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Secretary of State may refer any available evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

The attorneys employed by the Secretary of State shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Secretary of State approves.

(c) Injunction. — Whenever it appears to the Commission that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the Commission may in its discretion bring an action in any court of competent jurisdiction to enjoin those acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article.

(d) Enforcement. — For purposes of enforcing this Article, the Department of the Secretary of State's law enforcement agents have statewide jurisdiction. These law enforcement agents may assist local law enforcement agencies in their investigations and may initiate and carry out, in coordination with local law enforcement agencies, investigations of violations of this Article. These law enforcement agents have all the powers and authority of law enforcement officers when executing arrest warrants. (1995, c. 499, s. 1.)

Chapter 143A.

State Government Reorganization.

Article 1.

General Provisions.

Sec.
143A-11. Principal departments.

Article 5.

Department of Public Instruction.

143A-44.1. Creation.

Sec.
143A-44.2. State Board of Education; transfer of powers and duties to State Board.
143A-44.3. Superintendent of Public Instruction; creation; transfer of powers and duties.

ARTICLE 1.

General Provisions.

§ 143A-11. Principal departments.

Except as otherwise provided by this Chapter, or the State Constitution, all executive and administrative powers, duties and functions, not including those of the General Assembly and the judiciary, previously vested by law in the several State agencies, are vested in the following principal offices or departments:

(1) Office of the Governor.
(2) Office of the Lieutenant Governor.
(3) Department of the Secretary of State.
(4) Department of State Auditor.
(5) Department of State Treasurer.
(6) Department of Public Instruction.
(7) Department of Justice.
(8) Department of Agriculture.
(9) Department of Labor.
(10) Department of Insurance.
(11) through (13) Repealed by Session Laws 1995, c. 509, s. 96, effective July 29, 1995.
(14) Repealed by Session Laws 1973, c. 476, s. 6.
(15), (16) Repealed by Session Laws 1995, c. 509, s. 96, effective July 29, 1995.
(17), (18) Repealed by Session Laws 1973, c. 476, s. 6.
(19) Repealed by Session Laws 1973, c. 620, s. 9. (1971, c. 864, s. 1; 1973, c. 476, s. 6; c. 620, s. 9; 1975, c. 716, s. 7; 1977, c. 771, s. 4; 1989, c. 727, s. 218(120); c. 751, s. 7(17); 1991 (Reg. Sess., 1992), c. 959, s. 36; 1993, c. 522, s. 12; 1995, c. 509, s. 96.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, deleted former subdivisions (11), which read "Department of Administration"; (12), which read "Department of Transportation"; (13), which read "Department of Environment, Health, and Natural Resources"; (15), which read "Department of Social Rehabilitation and Control"; and (16), which read "Department of Commerce".

ARTICLE 5.

Department of Public Instruction.

§ 143A-44.1. Creation.

There is hereby created a Department of Public Instruction. The head of the Department of Public Instruction is the State Board of Education. Any provision of G.S. 143A-9 to the contrary notwithstanding, the appointment of the State Board of Education shall be as prescribed in Article IV, Section 4(1) of the Constitution. (1995, c. 72, s. 3.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995, c. 72, s. 3 having been § 143A-39.

Session Laws 1995, c. 72, c. 5, made this section effective upon ratification. The act was ratified May 9, 1995.

§ 143A-44.2. State Board of Education; transfer of powers and duties to State Board.

The State Board of Education shall have all powers and duties conferred on the Board by this Article, delegated to the Board by the Governor, and conferred by the Constitution and laws of this State. (1995, c. 72, s. 3.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995, c. 72, s. 3 having been § 143A-40.

Session Laws 1995, c. 72, c. 5, made this section effective upon ratification. The act was ratified May 9, 1995.

§ 143A-44.3. Superintendent of Public Instruction; creation; transfer of powers and duties.

The office of the Superintendent of Public Instruction, as provided for by Article III, Section 7 of the Constitution, and the Department of Public Instruction are transferred to the Department of Public Instruction. The Superintendent of Public Instruction shall be the Secretary and Chief Administrative Officer of the State Board of Education, and shall have all powers and duties conferred by the Constitution, by the State Board of Education, Chapter 115C of the General Statutes, and the laws of this State. (1995, c. 72, s. 3.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995, c. 72, s. 3 having been § 143A-42.

Session Laws 1995, c. 72, c. 5, made this section effective upon ratification. The act was ratified May 9, 1995.

Chapter 143B.

Executive Organization Act of 1973.

Article 1.

General Provisions.

Part 3. Rules Review Commission.

Sec.
143B-30.1. Rules Review Commission created.

Article 2.

Department of Cultural Resources.

Part 3. Art Museum Building Commission.

143B-59. (Applicable January 1, 1997) Art Museum Building Commission — members; selection; quorum; compensation.

Part 10A. State Capitol Preservation Act.

143B-80.5 through 143B-80.14. [Repealed.]

Part 16. State Library Commission.

143B-91. State Library Commission — members; selection; quorum; compensation.

Part 26. Advisory Committee on Abandoned Cemeteries.

143B-128. Advisory Committee on Abandoned Cemeteries; members; selections; compensation; terms; vacancy; duties.

Part 27. Roanoke Voyages and Elizabeth II Commission.

143B-129 through 143B-131. [Repealed.]

Part 27A. Roanoke Island Commission.

143B-131.1. Commission established.
143B-131.2. Roanoke Island Commission — Purpose, powers, and duties.
143B-131.3. Assignment of property; offices.
143B-131.4. Commission reports.
143B-131.5. Roanoke Island Commission — Additional powers and duties; transfer of assets and liabilities.
Sec.
143B-131.6. Roanoke Island Commission — Members; terms; vacancies; expenses; officers.
143B-131.7. Roanoke Island Commission — Counsel.
143B-131.8. Roanoke Island Commission Fund; Roanoke Island Commission Endowment Fund.
143B-131.9. Roanoke Island Commission staff.
143B-131.10. Exceptions.

Part 28. Andrew Jackson Historic Memorial Committee.

143B-132. Andrew Jackson Historic Memorial Committee.

Part 29. Veterans' Memorial Commission.

143B-133. Commission established.

Article 3.

Department of Human Resources.

Part 1. General Provisions.

143B-139.5. Department of Human Resources; adult care State/county share of costs.

Part 4. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

143B-148. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services — members; selection; quorum; compensation.

Part 5A. S.O.S. Program.

143B-152.1. Establishment of program; purpose; goals.
143B-152.2. Definitions.
143B-152.3. Administration of the program.
143B-152.4. Eligible applicants; application for grants.
143B-152.5. Grants review and selection.
143B-152.6. Cooperation of State and local agencies.
143B-152.7. Program evaluation; reporting requirements.
143B-152.8, 143B-152.9. [Reserved.]

Part 5B. Family Resource Center Grant Program.

Sec.

143B-152.10. Family Resource Center Grant Program; creation; purpose; intent.

143B-152.11. Administration of program.

143B-152.12. Eligible applicants: applications for grants.

143B-152.13. Grants review and selection.

143B-152.14. Cooperation of State and local agencies.

143B-152.15. Program evaluation; reporting requirements.

Part 6. Social Services Commission.

143B-153. Social Services Commission — creation, powers and duties.

Part 10A. Child Day-Care Commission.

143B-168.4. (Applicable January 1, 1997) Child Day-Care Commission — members; selection; quorum.

Part 10B. Early Childhood Initiatives.

143B-168.11. Early childhood initiatives; purpose; definitions.

143B-168.12. North Carolina Partnership for Children, Inc.; conditions.

143B-168.13. Implementation of program; duties of Department and Secretary.

143B-168.14. Local partnerships; conditions.

143B-168.15. Use of State funds.

143B-168.16. Home-centered services; consent.

Part 13. Council on Developmental Disabilities.

143B-178. Council on Developmental Disabilities — definitions.

Part 14. Governor's Advisory Council on Aging; Division of Aging.

143B-181. (Applicable January 1, 1997) Governor's Advisory Council on Aging — members; selection; quorum; compensation.

143B-181.1A. Plan for serving older adults; inventory of existing data; cooperation by State agencies.

Part 14B. Long-Term Care.

Sec.

143B-181.9A. [Repealed.]

Part 14C. Respite Care Program.

143B-181.10. Respite care program established; eligibility; services; administration; payment rates.

Part 14D. Long-Term Care Ombudsman Program.

143B-181.15. Long-Term Care Ombudsman Program/Office; policy.

143B-181.16. Long-Term Care Ombudsman Program/Office; definition.

143B-181.18. Office of State Long-Term Care Ombudsman Program/State Ombudsman duties.

143B-181.20. State/Regional Long-Term Care Ombudsman; authority to enter; cooperation of government agencies; communication with residents.

143B-181.22. State/Regional Long-Term Care Ombudsman; confidentiality.

Part 28. North Carolina Council on the Holocaust.

143B-216.21. (Applicable January 1, 1997) Membership; selection; quorum.

Article 4.

Department of Revenue.

Part 1. General Provisions.

143B-218.1. Report to Joint Legislative Commission on Governmental Operations.

Article 6.

Department of Correction.

Part 3. Parole Commission.

143B-266. Post-Release Supervision and Parole Commission — creation, powers and duties.

143B-267. Post-Release Supervision and Parole Commission — members; selection; removal; chairman; compensation; quorum; services.

Part 5. Substance Abuse Advisory Council.

143B-270. Substance Abuse Advisory Council.

Article 6A.

North Carolina State-County Criminal Justice Partnership Act.

Sec.

143B-273.15. Funding formula.

Article 7.

Department of Environment, Health, and Natural Resources.

Part 4. Environmental Management Commission.

143B-282.1. Environmental Management Commission — quasi-judicial powers; procedures.

143B-283. Environmental Management Commission — members; selection; removal; compensation; quorum; services.

143B-289.19. Office of Marine Affairs — creation.

Part 13. Parks and Recreation Council.

143B-311 through 143B-313. [Repealed effective July 1, 1996.]

Part 13A. North Carolina Parks and Recreation Authority.

143B-313.1. (Effective July 1, 1996) North Carolina Parks and Recreation Authority; creation; powers and duties.

143B-313.2. (Effective July 1, 1996) North Carolina Parks and Recreation Authority; members; selection; compensation; meetings.

Part 22. North Carolina Zoological Park Council.

143B-336.1. Special Zoo Fund.

Article 8.

Department of Transportation.

Part 2. Board of Transportation—Secondary Roads Council.

143B-350. Board of Transportation — organization; powers and duties, etc.

Article 9.

Department of Administration.

Part 2. State Goals and Policy Board.

143B-371, 143B-372. [Repealed.]

Part 2A. North Carolina Progress Board.

Sec.

143B-372.1. North Carolina Progress Board.

143B-372.2. Responsibilities.

143B-372.3. Staff.

Part 8A. Office of Marine Affairs.

143B-390.1. [Recodified.]

Part 9. North Carolina Human Relations Commission.

143B-392. North Carolina Human Relations Commission — Members; selection; quorum; compensation.

Part 14A. Governor's Advocacy Council for Persons with Disabilities.

143B-403.2. Governor's Advocacy Council for Persons with Disabilities — members; selection; quorum; compensation.

Part 15. North Carolina State Commission of Indian Affairs.

143B-407. North Carolina State Commission of Indian Affairs — membership; term of office; chairman; compensation.

Part 18. North Carolina Internship Council.

143B-417. North Carolina Internship Council — creation; powers and duties.

143B-418. (Applicable January 1, 1997) North Carolina Internship Council — members; selection; quorum; compensation; clerical, etc., services.

Part 22. North Carolina Agency for Public Telecommunications.

143B-426.9. (Applicable January 1, 1997) North Carolina Agency for Public Telecommunications — creation; membership; appointments, terms and vacancies; officers; meetings and quorum; compensation.

Part 25. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

143B-426.24. Board of Trustees of the North Carolina Public Em-

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ployee Deferred Compensation Plan.

Part 26. North Carolina Farmworker Council.

143B-426.25. North Carolina Farmworker Council — creation; membership; meetings.

Part 27. North Carolina Board of Science and Technology.

143B-426.31. North Carolina Board of Science and Technology; membership; organization; compensation; staff services.

Part 28. Office of the State Controller.

143B-426.39. Powers and duties of the State Controller.
143B-426.39A. Information Highway Grants Advisory Council.

Article 10.

Department of Commerce.

Part 1. General Provisions.

143B-431. Department of Commerce — functions.

Part 2. Economic Development.

Sec.
143B-434. Economic Development Board — creation, duties, membership.

Part 10. North Carolina State Ports Authority.

143B-452. (Applicable January 1, 1997) Creation of Authority — membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.
143B-456. Issuance of bonds and notes.

Article 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

143B-475.1. Deferred prosecution, community service restitution, and volunteer program.

ARTICLE 1.

General Provisions.

Part 3. Rules Review Commission.

§ 143B-30.1. Rules Review Commission created.

(a) **(Applicable until January 1, 1997)** The Rules Review Commission is created. The Commission shall consist of eight members to be appointed by the General Assembly, four upon the recommendation of the President of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. These appointments shall be made in accordance with G.S. 120-121, and vacancies in these appointments shall be filled in accordance with G.S. 120-122. Except as provided in subsection (b) of this section, all appointees shall serve two-year terms.

(a) **(Applicable January 1, 1997)** The Rules Review Commission is created. The Commission shall consist of eight members to be appointed by the General Assembly, four upon the recommendation of the President Pro Tempore of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. These appointments shall be made in accordance with G.S. 120-121, and vacancies in these appointments shall be filled in accordance with G.S. 120-122. Except as provided in subsection (b) of this section, all appointees shall serve two-year terms.

(b) In 1990, two of the appointments made by the General Assembly upon the recommendation of the President of the Senate shall expire June 30, 1991, and two shall expire June 30, 1992. In 1990, two of the appointments made by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall expire June 30, 1992, and two shall expire June 30, 1993. Subsequent terms shall be for two years.

(c) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, ineligibility, death, or disability of any member shall be for the balance of the unexpired term. The chairman shall be elected by the Commission, and he shall designate the times and places at which the Commission shall meet. The Commission shall meet at least once a month. A quorum of the Commission shall consist of five members of the Commission. The Commission is an independent agency under Article III, Section 11 of the Constitution.

(d) Members of the Commission who are not officers or employees of the State shall receive compensation of two hundred dollars ($200.00) for each day or part of a day of service plus reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

(e) Any other provision of the General Statutes notwithstanding, the appointment of employees of the Commission shall be made by the Commission. Nothing in this Article shall be construed to exempt employees of the Commission from the State Personnel Act.

(f) The Commission shall prescribe procedures and forms to be used in submitting rules to the Commission for review. The Commission may have computer access to the North Carolina Administrative Code to enable the Commission and its staff to view and copy rules in the Code. (1985 (Reg. Sess., 1986), c. 1028, s. 32; 1987 (Reg. Sess., 1988), c. 1111, s. 2; 1989, c. 35, s. 2; 1989 (Reg. Sess., 1990), c. 1038, s. 18; 1991, c. 418, s. 11; 1991 (Reg. Sess., 1992), c. 1030, s. 43; 1995, c. 490, s. 43.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is applicable until January 1, 1997. The second version of subsection (a) set out above is applicable January 1, 1997.

Editor's Note. —

Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the second sentence of subsection (a). For the applicability of this amendment, see editor's note.

ARTICLE 2.

Department of Cultural Resources.

Part 3. Art Museum Building Commission.

§ 143B-58. Art Museum Building Commission — creation, powers and duties.

CASE NOTES

Cited in State ex rel. State Art Museum Bldg. Comm'n v. Travelers Indem. Co., 111 N.C. App. 330, 432 S.E.2d 419 (1993).

§ 143B-59. (Applicable January 1, 1997) Art Museum Building Commission — members; selection; quorum; compensation.

The Art Museum Building Commission of the Department of Cultural Resources shall consist of 15 members with nine appointed by the Governor, three persons who have served in the State Senate to be appointed by the President Pro Tempore of the Senate, and three persons who have served in the House of Representatives to be appointed by the Speaker of the House of Representatives. The initial members of the Commission shall be the members of the existing Art Museum Building Commission who shall serve until the completion of the duties assigned to the Commission. Each vacancy occurring in the membership shall be filled by appointment of the officer authorized to make the initial appointment to the place vacated, and each appointee to fill a vacancy shall have the same qualifications prescribed by this Article for the appointee whom he succeeds.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provision of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 40; 1995, c. 490, s. 8.1.)

For this section as applicable until January 1, 1997, see the main volume.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the first sentence of the first paragraph. For the applicability of this amendment, see editor's note.

§ 143B-61.1. Termination of the Art Museum Building Commission.

CASE NOTES

Cited in State ex rel. State Art Museum Bldg. Comm'n v. Travelers Indem. Co., 111 N.C. App. 330, 432 S.E.2d 419 (1993).

Part 8. U.S.S. North Carolina Battleship Commission.

§ 143B-74.3. U.S.S. North Carolina Battleship Commission — employees not to have interest.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 10A. State Capitol Preservation Act.

§§ 143B-80.5 through 143B-80.14: Repealed by Session Laws 1995, c. 507, s. 12(a), effective July 28, 1995.

Part 14. North Carolina Arts Council.

§ 143B-87. North Carolina Arts Council — creation, powers and duties.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: 'This act shall be known as the Continuation budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 12.4, provides that artwork created with grant funds shall not be displayed or performed in a publicly funded facility if the governing body of the community that has zoning jurisdiction over the facility objects to the display or performance.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97, biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Part 16. State Library Commission.

§ 143B-91. State Library Commission — members; selection; quorum; compensation.

(a) **(Applicable until January 1, 1997)** The State Library Commission shall consist of 15 members. All members shall have an interest in the development of library and information services in North Carolina. Eight members shall be appointed by the Governor.

§ 143B-91(a) is set out twice. See notes.

One member shall be appointed by the Lieutenant Governor. One member shall be appointed by the speaker of the North Carolina House of Representatives. Three members shall be appointed by the North Carolina Public Library Directors Association. Two members shall be the President and the President-elect of the North Carolina Library Association or two appointees as determined by the North Carolina Library Association's Board of Directors. The State Librarian shall be an ex officio member and act as secretary to the Commission.

All appointments shall be for four-year terms with eight of the commissioners taking office on the first four-year cycle and seven commissioners taking office on the second four-year cycle. Any appointment to fill a vacancy in one of the positions appointed by the Governor, Lieutenant Governor, or Speaker of the House of Representatives shall be for the remainder of the unexpired term. Appointees shall not serve more than two successive four-year terms.

The Governor shall choose a chairperson from among the gubernatorial appointees. The chairperson shall serve not more than two successive two-year terms as chair.

Members of the Commission shall receive per diem and necessary travel and subsistence expenses as provided in G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources.

The Commission shall meet at least twice a year.

(a) **(Applicable January 1, 1997)** The State Library Commission shall consist of 15 members. All members shall have an interest in the development of library and information services in North Carolina. Eight members shall be appointed by the Governor. One member shall be appointed by the President Pro Tempore of the Senate. One member shall be appointed by the Speaker of the North Carolina House of Representatives. Three members shall be appointed by the North Carolina Public Library Directors Association. Two members shall be the President and the President-elect of the North Carolina Library Association or two appointees as determined by the North Carolina Library Association's Board of Directors. The State Librarian shall be an ex officio member and act as secretary to the Commission.

All appointments shall be for four-year terms with eight of the commissioners taking office on the first four-year cycle and seven commissioners taking office on the second four-year cycle. Any appointment to fill a vacancy in one of the positions appointed by the Governor, President Pro Tempore or Speaker of the House of Representatives shall be for the remainder of the unexpired term. Appointees shall not serve more than two successive four-year terms.

The Governor shall choose a chairperson from among the gubernatorial appointees. The chairperson shall serve not more than two successive two-year terms as chair.

Members of the Commission shall receive per diem and necessary travel and subsistence expenses as provided in G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

§ 143B-91(a) is set out twice. See notes.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources.

The Commission shall meet at least twice a year.

(b) There shall be standing committees established to advise the Secretary of Cultural Resources, the Commission, and the State Librarian. These committees shall be: Public Library Development; Interlibrary Cooperation; State Government Information Services; State Library Development; and any other committee deemed appropriate. Each committee shall be composed of a committee chairperson and at least six persons appointed annually by the Secretary of Cultural Resources with the approval of the Commission. At least one of the members of each committee shall be a member of the Commission. Each committee shall report to the Commission at least once a year. (1973, c. 476, s. 83; 1981, c. 918, s. 3; 1991, c. 757, s. 3; 1995, c. 490, s. 53.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is applicable until January 1, 1997. The second version of subsection (a) set out above is applicable January 1, 1997.

Editor's Note. —

Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment substituted "President Pro Tempore of the Senate" for "Lieutenant Governor" in the fourth sentence of the first paragraph of subsection (a) and "President Pro Tempore" for "Lieutenant Governor" in the second sentence of the second paragraph of subsection (a). For the applicability of this amendment, see editor's note.

Part 26. Advisory Committee on Abandoned Cemeteries.

§ 143B-128. Advisory Committee on Abandoned Cemeteries; members; selections; compensation; terms; vacancy; duties.

(a) **(Applicable until January 1, 1997)** There is created the Advisory Committee on Abandoned Cemeteries to be composed of 17 members appointed as follows:

(1) Two by the Governor;
(2) One by the President of the Senate;
(3) One by the Speaker of the House;
(4) One by the Secretary of the Department of Cultural Resources;
(5) One by the Executive Director of the North Carolina Commission of Indian Affairs, Department of Administration;
(6) One each by the chief executive of the following organizations, from the membership of the organization:
  a. North Carolina Archaeological Council;
  b. North Carolina Association of County Commissioners;
  c. North Carolina Chapter of the Daughters of the American Revolution;
  d. North Carolina Chapter of the Society of the Cincinnati;
  e. North Carolina Chapter of the Sons of the American Revolution;

§ 143B-128(a) is set out twice. See notes.

f. North Carolina Genealogical Society;
g. North Carolina Historical Commission;
h. North Carolina League of Municipalities;
i. Society of the Colonial Dames of America in the State of North Carolina;
j. Sons of Confederate Veterans;
k. United Daughters of the Confederacy.

(a) **(Applicable January 1, 1997)** There is created the Advisory Committee on Abandoned Cemeteries to be composed of 17 members appointed as follows:

(1) Two by the Governor;
(2) One by the President Pro Tempore of the Senate;
(3) One by the Speaker of the House;
(4) One by the Secretary of the Department of Cultural Resources;
(5) One by the Executive Director of the North Carolina Commission of Indian Affairs, Department of Administration;
(6) One each by the chief executive of the following organizations, from the membership of the organization:
  a. North Carolina Archaeological Council;
  b. North Carolina Association of County Commissioners;
  c. North Carolina Chapter of the Daughters of the American Revolution;
  d. North Carolina Chapter of the Society of the Cincinnati;
  e. North Carolina Chapter of the Sons of the American Revolution;
  f. North Carolina Genealogical Society;
  g. North Carolina Historical Commission;
  h. North Carolina League of Municipalities;
  i. Society of the Colonial Dames of America in the State of North Carolina;
  j. Sons of Confederate Veterans;
  k. United Daughters of the Confederacy.

(b) Members shall be appointed for staggered four-year terms beginning July 1 of odd-numbered years and shall serve until their successors are appointed and qualified. To create and maintain staggered terms, one member appointed by the Governor and the members appointed by the Speaker of the House, North Carolina Archaeological Council, North Carolina Chapter of the Daughters of the American Revolution, North Carolina Chapter of the Sons of the American Revolution, North Carolina Genealogical Society, North Carolina League of Municipalities, and the Sons of Confederate Veterans shall be appointed for two-year terms to expire June 30, 1983, at which time their successor shall be appointed pursuant to this section for four-year terms. The remaining committee members shall be appointed for four-year terms.

(c) Members shall serve without salary or compensation for their actual expenses resulting from the performance of their official duties.

(d) An appointment to fill a vacancy on the committee shall be made according to the procedures for appointment for regular terms, pursuant to this section. Any appointment to fill a vacancy on the committee for any reason shall be for the balance of the unexpired term.

(e) Upon its appointment the committee shall organize by electing from its membership a chairman and a vice-chairman. It shall be the duty of the committee to review existing statutes relating to cemeteries, make recommendations to the General Assembly concerning new statutes, and to assist the department in its efforts to collect information on abandoned cemeteries. (1981, c. 1016, s. 1; 1995, c. 490, s. 1.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is applicable until January 1, 1987. The second version of subsection (a) set out above is applicable January 1, 1997.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (a)(2). For the applicability of this amendment, see editor's note.

Part 27. Roanoke Voyages and Elizabeth II Commission.

§§ 143B-129 through 143B-131: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(c), effective October 1, 1994.

Cross References. — As to the Roanoke Island Commission, see now § 143B-131.1 et seq.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(d), provides that effective October 1, 1994, the statutory authority, powers, duties, functions, records, personnel, property, and funds of the Roanoke Voyages and Elizabeth II Commission are transferred to the Roanoke Island Commission, and that all its prescribed powers are transferred as well.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(b), effective October 1, 1994, amended Session Laws 1985, c. 673, ss. 3.2 and 3.3 (see Editor's notes following G.S. 143B-130 and 143B-131 in the main pamphlet) by deleting "Section 2" and substituting "Section 3".

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Part 27A. Roanoke Island Commission.

§ 143B-131.1. Commission established.

There is established the Roanoke Island Commission. The Commission shall be an independent commission, but shall be located within the Department of Cultural Resources for historic resource management, organizational, and budgetary purposes. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a); 1995, c. 507, s. 12.6(a).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(e), makes this Part effective October 1, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(d), provides that effective October 1, 1994, the statutory authority, powers, duties, functions, records, personnel, property, and funds of the Roanoke Voyages and Elizabeth II Commission are transferred to the Roanoke Island Commission, and that all its prescribed powers are transferred as well.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 12.6(d) provides: "The personnel, personal property, and unexpended balances of appropriations, allocations, or other funds for the Elizabeth II State Historic Site and Visitor Center, the Elizabeth II, and the Roanoke Island Commission are transferred from the Department of Cultural Resources to the Roanoke Island Commission."

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 28, 1995, in the second sentence added "an independent commission, but shall be", and substituted "historic resource management, organizational, and budgetary" for "organizational, budgetary, and administrative".

§ 143B-131.2. Roanoke Island Commission — Purpose, powers, and duties.

(a) The Commission is created to combine various existing entities in the spirit of cooperation for a cohesive body to protect, preserve, develop, and interpret the historical and cultural assets of Roanoke Island. The Commission is further created to operate and administer the Elizabeth II State Historic Site and Visitor Center, the Elizabeth II, Ice Plant Island, and all other properties under the administration of the Department of Cultural Resources located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo, except as otherwise determined by the Commission.

(b) The Commission shall have the following powers and duties:

(1) To advise the Secretary of Transportation and adopt rules on matters pertaining to, affecting, and encouraging restoration, preservation, and enhancement of the appearance, maintenance, and aesthetic quality of U.S. Highway 64/264 and N.C. 400 travel corridors on Roanoke Island and the grounds on Ice Plant Island.

(2) To operate the Elizabeth II State Historic Site and Visitor Center and the Elizabeth II as permanent memorials commemorating the Roanoke Voyages, 1584-1587.

(3) To supervise the development of Ice Plant Island and to manage future facilities.

(4) To advise the Secretary of the Department of Cultural Resources on matters pertinent to historical and cultural events on Roanoke Island.

(5) With the assistance of the Department of Cultural Resources, to identify, preserve, and protect properties located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo consistent with applicable State laws and rules.

(6) To establish and collect a charge for admission to any property or event operated by the Commission.
(7) To solicit and accept gifts, grants, and donations.
(8) To cooperate with the Secretary and Department of Cultural Resources, the Secretary and Department of Transportation, the Secretary and Department of Environment, Health, and Natural Resources, and other governmental agencies, officials, and entities, and provide them with assistance and advice.
(9) To adopt and enforce such bylaws, rules, and guidelines that the Commission deems to be reasonably necessary in order to carry out its powers and duties. Chapter 150B of the General Statutes does not apply to the adoption of rules by the Commission.
(10) To establish and maintain a separate fund composed of moneys which may come into its hands from gifts, donations, grants, or bequests, which funds will be used by the Commission for purposes of carrying out its duties and purposes herein set forth. The Commission may also establish a reserve fund to be maintained and used for contingencies and emergencies.
(11) By cooperative arrangement with other agencies, groups, individuals, and other entities, to coordinate and schedule historical and cultural events on Roanoke Island.
(12) Make recommendations to the Secretary of Cultural Resources concerning personnel and budgetary matters.
(13) To acquire real and personal property by purchase, gift, bequest, devise, and exchange.
(14) To administer the Roanoke Island Commission Fund and the Roanoke Island Commission Endowment Fund as provided in G.S. 143B-131.8.
(15) To procure supplies, services, and property as appropriate and to enter into contracts, leases, or other legal agreements consistent with State laws and Department rules to carry out the purposes of this Part and duties of the Commission. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a); 1995, c. 507, s. 12.6(b).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 28, 1995, added "Purpose" in the catchline of this section; divided former subsection (a) to form present subsections (a) and (b); added the second sentence of present subsection (a); substituted "shall have the following powers and duties" for "may" in the introductory language of present subsection (b); in subdivision (b)(1) added "To" at the beginning of the subdivision, "maintenance", and "and the grounds on Ice Plant Island"; rewrote subdivisions (b)(2) and (b)(3); added "To" at the beginning of subdivision (b)(4); in subdivision (b)(5) inserted "to" preceding "identify", and deleted "Department" preceding "rules"; rewrote subdivision (b)(6); added "To" at the beginning of subdivisions (b)(7) and (b)(8); in subdivision (b)(9) added "To" at the beginning of the subdivision, deleted "regulations" following "rules", and added the last sentence; in the first sentence of subdivision (b)(10) added "To" at the beginning of the sentence, substituted "separate fund" for "'Roanoke Island Commission Fund'", and in the last sentence added "also"; added "to" preceding "coordinate" in subdivision (b)(11); added "To" at the beginning of subdivision (b)(13); added subdivision (b)(14); redesignated former subsection (b) as present subdivision (b)(15), and deleted the introductory language of former subsection (b), which read "Contract Authority. — The Commission may"; in subdivision (b)(15) added "To" at the beginning of the subdivision, and substituted "to" for "may" preceding "enter".

§ 143B-131.3. Assignment of property; offices.

Upon request of the Commission, the head of any State agency may assign property, equipment, and personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Part. Assignments under this section shall be without reimbursement by the Commission to the agency from which the assignment was made. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.4. Commission reports.

Before July 1, 1995, the Commission shall submit to the General Assembly a comprehensive report incorporating specific recommendations of the Commission for development and promotion of the Elizabeth II State Historic Site and Visitor Center. After the initial report, the Commission shall submit a report to the General Assembly within 30 days of the convening of each Regular Session of the General Assembly. The report shall include:

(1) A summary of actions taken by the Commission consistent with the powers and duties of the Commission set forth in G.S. 143B-131.2.

(2) Recommendations for legislation and administrative action to promote and develop the Elizabeth II State Historic Site and Visitor Center.

(3) An accounting of funds received and expended. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.5. Roanoke Island Commission — Additional powers and duties; transfer of assets and liabilities.

(a) The Commission shall also have the powers and duties established by Chapter 1194, Session Laws of 1981, as amended.

(b) Effective October 1, 1994, all lawful standards, rules, regulations, guidelines, contracts, agreements, permits, bylaws, and certificates of appropriateness of or issued by the Roanoke Voyages Corridor Commission or the Roanoke Voyages and Elizabeth II Commission shall remain in effect until modified, amended, revoked, repealed, or changed (as appropriate) by the Roanoke Island Commission in accordance with law.

(c) Effective October 1, 1994, all the assets and liabilities of the Roanoke Voyages and Elizabeth II Commission are vested in the Roanoke Island Commission. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.6. Roanoke Island Commission — Members; terms; vacancies; expenses; officers.

(a) The Commission shall consist of 24 voting members appointed as follows:

(1) Six members appointed by the Governor;

(2) Six members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, at least two of whom reside in Dare County;

(3) Six members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, at least two of whom reside in Dare County; and

(4) The following persons, or their designees, ex officio:
  a. The Governor;
  b. The Attorney General;
  c. The Secretary of the Department of Cultural Resources;
  d. The Secretary of the Department of Transportation;
  e. The Chair of the Dare County Board of Commissioners; and
  f. The Mayor of Manteo.

(b) Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

(1) The Governor shall initially appoint three members for a term of two years and three members for a term of three years.

(2) The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall initially appoint three members for a term of two years and three members for a term of three years.

(3) The General Assembly upon the recommendation of the Speaker of the House of Representatives shall initially appoint three members for a term of two years and three members for a term of three years.

Initial terms shall commence on October 1, 1994.

(c) The Governor shall appoint a chair biennially from among the membership of the Commission. The initial term of the chair shall commence on October 1, 1994. The Commission shall elect from its membership a vice-chair, a secretary, and treasurer to serve two-year terms. The Commission in its discretion may appoint a historian to serve at its pleasure. Initial terms shall commence on October 1, 1994.

(d) A vacancy in the Commission resulting from the resignation of a member or otherwise, shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(e) The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable. When approved by the Commission, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(f) Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Part.

(g) The chair shall convene the Commission. Meetings shall be held as often as necessary, but not less than two times a year.

(h) A majority of the members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Commission shall be necessary for action to be taken by the Commission.

(i) The Commission shall make its recommendations by September 15 of each year that terms expire for appointments for terms commencing November 1 of that year; provided the initial appointments for terms commencing October 1, 1994, shall be made upon recommendation of the Roanoke Island Historical Association. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.7. Roanoke Island Commission — Counsel.

The Attorney General shall assign legal counsel to the Commission. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.8. Roanoke Island Commission Fund; Roanoke Island Commission Endowment Fund.

(a) The Roanoke Island Commission Fund is established as a nonreverting Fund and shall be administered by the Roanoke Island Commission. Seventy-five percent (75%) of the revenues collected from any property operated by the Roanoke Island Commission shall be credited to the Fund. In addition, gifts, donations, grants, or bequests received by the Commission for the purpose of carrying out its duties and purposes may also be deposited in the Fund.

The funds in the Roanoke Island Commission Fund shall be used for the expenses of the Roanoke Island Commission and the operation and maintenance of properties operated by the Commission.

(b) The Roanoke Island Commission Endowment Fund is established as a nonreverting Fund and shall be administered by the Commission. Twenty-five percent (25%) of the revenue collected from any property operated by the Roanoke Island Commission shall be credited to the Fund. Until July 1, 2000, the revenues credited to the Roanoke Island Commission Endowment Fund and the interest earned on the revenue shall be held in reserve to create the principal for the Fund.

On and after July 1, 2000, eighty percent (80%) of the interest generated by the principal in the Roanoke Island Commission Endowment Fund shall be used by the Roanoke Island Commission to carry out its duties and purposes as set out by this Part. The Roanoke Island Commission may also use those interest funds for capital expenditures for the properties operated by the Commission. (1995, c. 507, s. 12.6(c).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 12.6(e) made this section effective upon ratification. The act was ratified July 28, 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 143B-131.9. Roanoke Island Commission staff.

The Commission shall appoint and fix the salary of an Executive Director to serve at its pleasure and may hire other employees. Employees of the Commission who were transferred from the Department of Cultural Resources as of July 1, 1995, and who were subject to the State Personnel Act, Chapter 126 of the General

Statutes, at the time of the transfer shall continue to be subject to that act. Employees of the Commission who were transferred but were not subject to the State Personnel Act at the time of transfer are not subject to the State Personnel Act. Employees of the Commission who were not transferred are not subject to the State Personnel Act unless the Commission designates the employee's position as subject to the State Personnel Act when the employee is hired. Once designated, a position remains subject to the State Personnel Act unless exempted in accordance with that act. (1995, c. 507, s. 12.6(c).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 12.6(e) makes this section effective upon ratification. The act was ratified July 28, 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 143B-131.10. Exceptions.

Notwithstanding G.S. 143-28, the following provisions do not apply to this Part: G.S. 143-16.3 and G.S. 143-23. (1995, c. 507, s. 12.6(c).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 12.6(e) makes this section effective upon ratification. The act was ratified July 28, 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Part 28. Andrew Jackson Historic Memorial Committee.

§ 143B-132. Andrew Jackson Historic Memorial Committee.

(a) The State of North Carolina and its citizens have long noted and recognized the origins and early life of Andrew Jackson, the nation's seventh president, in the Waxhaw region along the North Carolina-South Carolina border. It is important that this State recognize the origins and early life of this outstanding national leader in Western North Carolina. It is necessary to plan an appropriate memorial in Union County, North Carolina, to commemorate and display for all Americans the origins and early life of Andrew Jackson.

(b) **(Applicable until January 1, 1997)** There is created an Andrew Jackson Historic Memorial Committee to consist of 12 members, six appointed by the Speaker of the House of Representatives and six appointed by the President of the Senate. Members shall serve four-year terms. Vacancies shall be filled by the appointing officer for the unexpired term.

(b) **(Applicable January 1, 1997)** There is created an Andrew Jackson Historic Memorial Committee to consist of 12 members, six appointed by the Speaker of the House of Representatives and six appointed by the President Pro Tempore of the Senate. Members

§ 143B-132(b) is set out twice. See notes.

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shall serve four-year terms. Vacancies shall be filled by the appointing officer for the unexpired term.

(c) The primary duties and responsibilities of the Committee are:

- (1) To assist the Division of Archives and History, Department of Cultural Resources in determining the need for a permanent memorial to honor Andrew Jackson and to commemorate and display the origins and early life of Jackson in the Waxhaw region;
- (2) To assist the Division of Archives and History, Department of Cultural Resources in determining the location, design, content, and form of a memorial, if the Committee determines that one is needed, at one of the sites associated with the early life of Andrew Jackson;
- (3) To assist the Division of Archives and History, Department of Cultural Resources in determining the most appropriate methods for proceeding with the establishment and operation of the memorial, including methods for obtaining the necessary financial resources for property acquisition, capital expenditures, and operational expenses; and
- (4) To select appropriate qualified researchers and research institutions to assist the Committee in undertaking any required studies to complete the Committee's duties and responsibilities.

(d) Members of this Committee may not receive per diem, travel reimbursement, or subsistence allowances.

(e) Administrative and staff services for the Committee shall be provided by the Division of Archives and History, Department of Cultural Resources, which shall also provide the Committee with information in its possession relating to past research concerning the origins and early life of Andrew Jackson. In addition, the Division of Archives and History, Department of Cultural Resources shall assist the Committee in preparing a report for submission to the General Assembly.

(f) Funds for the operation of the Committee shall be provided by the Department of Cultural Resources. (1985, c. 757, s. 180; 1995, c. 490, s. 7.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is applicable until January 1, 1997. The second version of subsection (b) set out above is applicable January 1, 1997.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subsection (b). For the applicability of this amendment, see editor's note.

Part 29. Veterans' Memorial Commission.

§ 143B-133. Commission established.

(a) There is created within the Department of Cultural Resources the Veterans' Memorial Commission.

(b) **(Applicable until January 1, 1997)** The Veterans' Memorial Commission shall consist of 15 members, none of whom shall be

§ 143B-133(b) is set out twice. See notes.

members of the North Carolina General Assembly. The appointments shall be made as follows:

(1) Five persons shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
(2) Five persons shall be appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.
(3) Five persons shall be appointed by the Governor.

Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies in appointive terms shall be filled by appointment by the Governor.

(b) **(Applicable January 1, 1997)** The Veterans' Memorial Commission shall consist of 15 members, none of whom shall be members of the North Carolina General Assembly. The appointments shall be made as follows:

(1) Five persons shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
(2) Five persons shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
(3) Five persons shall be appointed by the Governor.

Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies in appointive terms shall be filled by appointment by the Governor.

(c) The members of the Commission shall serve for the life of the Commission.

(d) The members of the Commission shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(e) The majority of the Commission shall constitute a quorum for the transaction of business.

(f) The members of the Commission shall select a chairman and vice-chairman.

(g) The Commission shall meet at least once during each calendar quarter upon the call of the chairman. The initial meeting shall be called by the Secretary of Cultural Resources to be held no later than August 31, 1987.

(h) The Department of Cultural Resources shall provide administrative and support staff to the Commission to assist it in performing its duties.

(i) The Commission shall terminate and this Part expire upon dedication of the monument. (1987, c. 779, s. 1; 1995, c. 490, s. 62.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is applicable until January 1, 1997. The second version of subsection (b) set out above is applicable January 1, 1997.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (b)(2). For the applicability of this amendment, see editor's note.

ARTICLE 3.

Department of Human Resources.

Part 1. General Provisions.

§ 143B-138. Department of Human Resources — functions and organization.

Editor's Note. —

As amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 25.26, and by Session Laws 1995, c. 324, s. 23.34, Session Laws 1994, Extra Session, c. 24, s. 36 provides that the Department of Human Resources shall conduct a study of the Division of Youth Services' juvenile justice system in order to ensure the efficacy, cost-effectiveness, and optimal utilization of the system and its continuum of services. Of the funds appropriated to the Department, one hundred fifty thousand dollars ($150,000) for the 1993-94 fiscal year is to be used to fund the study. The study is to be completed by October 1, 1995, and the results are to be reported to the General Assembly by November 1, 1995.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 23.5, provides that the Division of Family Development of the Department of Human Resources is abolished; that the Family Preservation Program is transferred to the Division of Social Services of the Department of Human Resources, the Family Support Program is transferred to the Division of Child Development of the Department of Human Resources, and the Office of Economic Opportunity is transferred to the Office of the Secretary of the Department of Human Resources; and that all transfers include the transfer of appropriations, budgets, and powers and duties.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 481, s. 1, provides that the Secretary of the Department of Human Resources shall establish a special task force to determine a minimum reimbursement rate for Adult Developmental Activity Programs, that the task force shall review the current funding stream, and shall report to the Mental Health Study Commission the results of its study, in time to be included in the Mental Health Study Commission's report to the 1995 (Reg. Sess., 1996) General Assembly; and further provides for the members of the task force and for funding.

§ 143B-139.4. Department of Human Resources; authority to assist private nonprofit foundations.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 23.1, provides: "Notwithstanding the limitations of G.S. 143B-139.4, the Secretary of the Department of Human Resources may assign employees of the Office of Rural Health and Resource Development to serve as in-kind match to nonprofit corporations working to establish health care programs that will improve health care access while controlling costs."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

§ 143B-139.5. Department of Human Resources; adult care State/county share of costs.

State funds available to the Department of Human Resources shall pay fifty percent (50%), and the counties shall pay fifty percent (50%) of the authorized rates for care in adult care homes including area mental health agency-operated or contracted-group homes. (1991, c. 689, s. 128; 1995, c. 535, s. 31.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care" for "domiciliary" in the catchline; deleted "domiciliary" following "authorized rates for"; and substituted "adult care homes" for "homes for the aged and for family care homes".

Part 4. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

§ 143B-148. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services — members; selection; quorum; compensation.

(a) **(Applicable until January 1, 1997)** The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Human Resources shall consist of 26 members:

(1) Four of whom shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President of the Senate in accordance with G.S. 120-121. These members shall have concern for the problems of mental illness, developmental disabilities, alcohol and drug abuse. Members shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122;

(2) Twenty-two of whom shall be appointed by the Governor, one from each congressional district in the State in accordance with G.S. 147-12(3)b, and 10 at-large members.

§ 143B-148(a) is set out twice. See notes.

a. Of these 22 members, three shall have a special interest in mental health, three shall have a special interest in mental retardation, three shall have a special interest in developmental disabilities other than mental retardation, three shall have a special interest in alcohol abuse and alcoholism and three shall have a special interest in drug abuse. Each group of three shall be made up of one member who is a consumer representative; one other who is a representative of a local or State citizen organization or association; and one other who is a professional in the field.

b. The remaining seven members shall be appointed from the general public, other citizen groups, area mental health, developmental disabilities, and substance abuse authorities, or from other related agencies.

c. Of these 22 appointments, at least one shall be a licensed physician and at least one other shall be a licensed attorney.

d. The Governor shall appoint members to the Commission in accordance with the foregoing provisions. The terms of all Commission members appointed by the Governor shall be four years. The initial term of the person representing the 12th Congressional District shall begin January 3, 1993, and expire June 30, 1996. All Commission members shall serve their designated terms and until their successors are duly appointed and qualified. All Commission members may succeed themselves.

(3) All appointments shall be made pursuant to current federal rules and regulations, when not inconsistent with State law, which prescribe the selection process and demographic characteristics as a necessary condition to the receipt of federal aid.

(a) **(Applicable January 1, 1997)** The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Human Resources shall consist of 26 members:

(1) Four of whom shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. These members shall have concern for the problems of mental illness, developmental disabilities, alcohol and drug abuse. Members shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122;

(2) Twenty-two of whom shall be appointed by the Governor, one from each congressional district in the State in accordance with G.S. 147-12(3)b, and 10 at-large members.

a. Of these 22 members, three shall have a special interest in mental health, three shall have a special interest in mental retardation, three shall have a special interest in developmental disabilities other than mental retardation, three shall have a special interest in alcohol

§ 143B-148(a) is set out twice. See notes.

abuse and alcoholism and three shall have a special interest in drug abuse. Each group of three shall be made up of one member who is a consumer representative; one other who is a representative of a local or State citizen organization or association; and one other who is a professional in the field.

b. The remaining seven members shall be appointed from the general public, other citizen groups, area mental health, developmental disabilities, and substance abuse authorities, or from other related agencies.

c. Of these 22 appointments, at least one shall be a licensed physician and at least one other shall be a licensed attorney.

d. The Governor shall appoint members to the Commission in accordance with the foregoing provisions. The terms of all Commission members appointed by the Governor shall be four years. The initial term of the person representing the 12th Congressional District shall begin January 3, 1993, and expire June 30, 1996. All Commission members shall serve their designated terms and until their successors are duly appointed and qualified. All Commission members may succeed themselves.

(3) All appointments shall be made pursuant to current federal rules and regulations, when not inconsistent with State law, which prescribe the selection process and demographic characteristics as a necessary condition to the receipt of federal aid.

(b) Except as otherwise provided in this section, the provisions of G.S. 143B-13 through 143B-20 relating to appointment, qualifications, terms and removal of members shall apply to all members of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

(c) Commission members shall receive per diem, travel and subsistence allowances in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(d) A majority of the Commission shall constitute a quorum for the transaction of business.

(e) All clerical and other services required by the Commission shall be supplied by the Secretary of the Department of Human Resources. (1973, c. 476, s. 130; 1977, c. 679, s. 2; 1981, c. 51, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 55.1 through 57; 1989, c. 625, s. 23; 1991 (Reg. Sess., 1992), c. 1038, s. 17; 1995, c. 490, s. 34.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is applicable until January 1, 1997. The second version of subsection (a) set out above is applicable January 1, 1997.

Editor's Note. —

Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the first sentence of subdivision (a)(1). For the applicability of this amendment, see editor's note.

Part 4A. Family Preservation Act.

§ 143B-150.5. Family Preservation Services Program established; purpose.

Editor's Note. — Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 23.5, provides that the Division of Family Development of the Department of Human Resources is abolished, and that the the Family Preservation Program is transferred to the Division of Social Services of the Department of Human Resources, which includes the transfer of all appropriations, budgets, and powers and duties.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Part 5A. S.O.S. Program.

§ 143B-152.1. Establishment of program; purpose; goals.

(a) There is created in the Department of Human Resources the Support Our Students (S.O.S.) Program. The purpose of the program is to award grants to neighborhood- and community-based organizations to establish local S.O.S. programs that provide high quality after-school activities for school-aged children and provide for comprehensive, collaborative delivery of services by public and nonpublic agencies to these children. These services shall be designed to enrich and make a positive impact on the lives of school-aged children. These after-school activities may include activities after the regular school day and activities on days that students are not required to attend school.

(b) The goals of the program are to:

(1) Reduce juvenile crime in local communities served by the program;

(2) Recruit community volunteers to provide positive adult role models for school-aged children and to help supervise after-school activities;

(3) Reduce the number of students who are unsupervised after school, otherwise known as "latchkey" children;

(4) Improve the academic performance of students participating in the program;

(5) Meet the physical, intellectual, emotional, and social needs of students participating in the program and improve their attitudes and behavior; and

(6) Improve coordination of existing resources and enhance collaboration so as to provide services to school-aged children effectively and efficiently. (1994, Ex. Sess., c. 24, s. 30(a).)

Editor's Note. — Session Laws 1994, Extra Session, c. 24, which enacted this Part, in s. 3 provides: "This act shall be known as the Crime Control and Prevention Act of 1994."

Session Laws 1994, Extra Session, c.

24, s. 73 makes this Part effective upon ratification. The Act was ratified March 26, 1994.

Session Laws 1994, Extra Session, c. 24, s. 30(b) to (e) provides:

"(b) of the funds appropriated to the Department of Human Resources for the S.O.S. Program for the 1994-95 fiscal year, the Department may use up to two hundred thousand dollars ($200,000) to administer the S.O.S. Program, to provide technical assistance to applicants and to S.O.S. programs, and to evaluate the local S.O.S. programs. The Department may contract with appropriate public or nonprofit agencies to provide the technical assistance, including training and related services.

"(c) It is the goal of the General Assembly that wherever possible programs that receive grants for the 1994-95 fiscal year shall begin no later than July 1, 1994.

"(d) In awarding grants under the S.O.S. Program, the Department shall ensure that the continuation costs of the State of the Program in subsequent fiscal years do not exceed the cost of the Program for the 1994-95 fiscal year.

"(e) Notwithstanding G.S. 143-23, and with the approval of the Office of State Budget and Management, the Department of Human Resources may use up to two hundred thousand dollars ($200,000) of the funds appropriated or otherwise available for the 1993-94 fiscal year to begin implementation of this section prior to July 1, 1994. The amount available to implement this section for the 1994-95 fiscal year shall be reduced by the amount spent prior to July 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1994, Extra Session, c. 24, s. 71 is a severability clause.

§ 143B-152.2. Definitions.

As used in this Part, "school-aged children" means children enrolled in kindergarten through the ninth grade. (1994, Ex. Sess., c. 24, s. 30(a).)

§ 143B-152.3. Administration of the program.

The Department shall develop and implement the Support Our Students (S.O.S.) Program. The Department shall:

(1) Sponsor a statewide conference each year for teams of interested representatives to provide background information and assistance regarding all aspects of the program;
(2) Disseminate information regarding the program to interested neighborhood and community groups;
(3) Develop and disseminate a request for applications to establish local S.O.S. programs;
(4) Provide initial technical assistance to grant applicants and ongoing technical assistance as grants are implemented;
(5) Administer funds appropriated by the General Assembly;
(6) Monitor the grants funded;
(7) Revoke a grant if necessary or appropriate;
(8) Develop and implement a performance-based evaluation system to evaluate the program, in accordance with G.S. 143B-152.7(a);
(9) Report on the program implementation to the General Assembly, the Joint Legislative Committee on Governmental Operations, and the Office of the Governor, in accordance with G.S. 143B-152.7(b); and
(10) Adopt any rules necessary to implement this Part. (1994, Ex. Sess., c. 24, s. 30(a).)

§ 143B-152.4. Eligible applicants; application for grants.

(a) A community- or neighborhood-based 501(c)(3) entity or a consortium consisting of one or more local 501(c)(3) entities and one or more local school administrative units may apply for a grant.

(b) Applicants for grants shall submit to the Department an application that includes the following information:

(1) Identification of one or more neighborhoods to be served by the local S.O.S. program, based on a needs assessment of existing conditions for school-aged children to be served. Data used in the needs assessment may include for each neighborhood to be served by a local program (i) dropout statistics, (ii) the number and percentage of school-aged children who participate in the federal subsidized lunch program, (iii) the number of suspensions and expulsions involving school-aged children, (iv) the number of children to be served, (v) the number and percentage of students with two working parents or one single parent to be served at a site, (vi) the incidence of juvenile crime in the neighborhood, and (vii) any other relevant or unique local demographic data.

Local authorities shall provide this or related information on a timely basis to local 501(c)(3) entities submitting applications to establish local S.O.S. programs;

(2) A three-year plan that addresses data used in the needs assessment and that includes proposed goals and anticipated outcomes of the local S.O.S. program. The plan shall be prepared after consultation with local after-school programs, schools, community organizations or groups which have as their purpose assisting or helping school-aged children who are at risk of failing in school or entering the juvenile justice system, or other appropriate groups. In addition, the three-year plan shall provide for regular collaborative efforts to seek input and advice from parents of the students being served and from other citizens who reflect the demographic conditions of the students being served;

(3) A statement of how grant funds would be used to address local problems and what other resources would be used to address the problems. This statement should include a list of services to be offered that are related to the goals and outcomes and should include plans for recruiting volunteers to assist in the program's activities; and

(4) A process for assessing on an annual basis the success of the local plan for addressing the goals of the local S.O.S. program. (1994, Ex. Sess., c. 24, s. 30(a).)

§ 143B-152.5. Grants review and selection.

(a) The Department shall develop and disseminate a request for applications and establish procedures to be followed in developing and submitting applications to establish local S.O.S. programs and administering grants to establish local S.O.S. programs.

(b) The Secretary of Human Resources shall appoint a State task force to assist the Secretary in reviewing grant applications. The

State task force shall include representatives of the Department of Human Resources, the Department of Public Instruction, local school administrative units, educators, parents, the juvenile justice system, social services, and governmental agencies providing services to children, and other members the Secretary considers appropriate. In appointing the State task force, the Secretary shall consult with the Superintendent of Public Instruction in an effort to coordinate the membership of this State task force, the State task force appointed by the Secretary pursuant to G.S. 143B-152.14, and the State task force appointed by the Superintendent pursuant to G.S. 115C-238.42.

In reviewing grant applications, the Secretary and the State task force may consider (i) the severity of the local problems as determined by the needs assessment data, (ii) the likelihood that the locally designed plan will result in high quality after-school services for school-aged children, (iii) evidence of local collaboration and coordination of services, (iv) any innovative or experimental aspects of the plan that will make it a useful model for replication in other neighborhoods and communities, and (v) any other factors which affect the well-being of school-aged children.

(c) In determining the amount of funds an applicant receives, the Secretary and the State task force may consider (i) the number of children to be served, (ii) the number and percentage of children to be served who participate in the subsidized lunch program, (iii) the number and percentage of school-aged children with two working parents or one single parent to be served, (iv) the availability of other resources or funds, and (v) the amount needed to implement the proposal.

(d) The Secretary shall award the grants. (1994, Ex. Sess., c. 24, s. 30(a).)

§ 143B-152.6. Cooperation of State and local agencies.

All agencies of the State and local government, including departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Human Resources, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Human Resources, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies, and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program. (1994, Ex. Sess., c. 24, s. 30(a).)

§ 143B-152.7. Program evaluation; reporting requirements.

(a) The Department of Human Resources shall develop and implement an evaluation system that will assess the efficiency and effectiveness of the S.O.S. Program. The Department shall design this system to:

(1) Provide information to the Department and to the General Assembly on how to improve and refine the programs;
(2) Enable the Department and the General Assembly to assess the overall quality, efficiency, and impact of the existing programs;
(3) Enable the Department of the General Assembly to determine whether to modify the S.O.S. Program; and
(4) Provide a detailed fiscal analysis of how State funds for these programs were used.

(b) The Department shall report to the General Assembly and the Joint Legislative Commission on Governmental Operations by May 15, 1994, on its progress in developing the evaluation system and in developing and implementing the program. It shall report prior to February 1, 1995, on the evaluation system developed by the Department and on program implementation. The Department shall present an annual report on October 1, 1995, and annually thereafter to the General Assembly and to the Joint Legislative Commission on Governmental Operations on the implementation of the program and the results of the program evaluation.

The Department shall also report annually to the Joint Legislative Commission on Governmental Operations and to the Governor on the implementation of the S.O.S. Program.

(c) A local 501(c)(3) entity or consortium that receives a grant under this Part shall report by August 1 of each year to the Department on the implementation of the program. This report shall demonstrate the extent to which the local S.O.S. Program has met the local needs, goals, and anticipated outcomes as set forth in the grant applications. (1994, Ex. Sess., c. 24, s. 30(a).)

§§ 143B-152.8, 143B-152.9: Reserved for future codification purposes.

Part 5B. Family Resource Center Grant Program.

§ 143B-152.10. Family Resource Center Grant Program; creation; purpose; intent.

(a) There is created in the Department of Human Resources the Family Resource Center Grant Program. The purpose of the program is to provide grants to establish family resource centers that provide services to children from birth through elementary school age and to their families that:
(1) Enhance the children's development and ability to attain academic and social success;
(2) Ensure a successful transition from early childhood education programs and child care to the public schools;
(3) Assist families in achieving economic independence and self-sufficiency; and
(4) Mobilize public and private community resources to help children and families in need.

(b) It is the intent of the General Assembly to encourage and support broad-based collaboration among public and private agencies and among people who reflect the racial and socioeconomic diversity in communities to develop initiatives that (i) prepare children to learn effectively and to have a successful school experience, (ii) enhance the ability of families to become advocates for and supporters of education for the children in their families, and (iii) enhance the ability of families to function as nurturing and effective family units.

(c) It is further the intent of the General Assembly that this program shall be targeted to those neighborhoods that have disproportionately high levels of (i) children who would be less likely to attain educational or social success, (ii) families with low incomes, and (iii) crime and juvenile delinquency. (1994, Ex. Sess., c. 24, s. 31(a).)

Editor's Note. — Session Laws 1994, Extra Session, c. 24, s. 73, makes this Part effective upon ratification. The Act was ratified March 26, 1994.

Session Laws 1994, Extra Session, c. 24, which enacted this Part, in s. 3 provides: "This act shall be known as the Crime Control and Prevention Act of 1994."

Session Laws 1994, Extra Session, c. 24, s. 31(b) to (e) provides:

"(b) Of the funds appropriated to the Department of Human Resources for the Family Resource Center Grant Program for the 1994-95 fiscal year, the Department may use up to two hundred thousand dollars ($200,000) to administer the Family Resource Center Grant Program, to provide technical assistance to applicants and to local family resource centers, and to evaluate the local family resource centers. The Department may contract with appropriate public or nonprofit agencies to provide the technical assistance, including training and related services.

"(c) It is the goal of the General Assembly that wherever possible programs that receive grants for the 1994-95 fiscal year shall begin no later than July 1, 1994.

"(d) In awarding grants under the Family Resource Center Grant Program, the Department shall ensure that the continuation costs to the State of the program in subsequent fiscal years do not exceed the cost of the program for the 1994-95 fiscal year.

"(e) Notwithstanding G.S. 143-23, and with the approval of the Office of State Budget and Management, the Department of Human Resources may use up to two hundred thousand dollars ($200,000) of the funds appropriated or otherwise available for the 1993-94 fiscal year to begin implementation of this section prior to July 1, 1994. The amount available to implement this section for the 1994-95 fiscal year shall be reduced by the amount spent prior to July 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1994, Extra Session, c. 24, s. 71 is a severability clause.

§ 143B-152.11. Administration of program.

The Department of Human Resources shall develop and implement the Family Resource Center Grant Program. The Department shall:

(1) Sponsor a statewide conference for teams of interested representatives to provide background information and assistance regarding all aspects of the program;
(2) Disseminate information regarding the program to interested local community groups;
(3) Provide initial technical assistance and ongoing technical assistance to grant recipients;
(4) Administer funds appropriated by the General Assembly;
(5) Monitor the grants funded and the ongoing operations of family resource centers;
(6) Revoke a grant if necessary or appropriate;

(7) Report to the General Assembly and the Joint Legislative Commission on Governmental Operations, in accordance with G.S. 143B-152.15; and

(8) Adopt rules to implement this Part. (1994, Ex. Sess., c. 24, s. 31(a).)

§ 143B-152.12. Eligible applicants: applications for grants.

(a) A community- or neighborhood-based 501(c)(3) entity or a consortium consisting of one or more local 501(c)(3) entities and one or more local school administrative units may apply for a grant.

(b) Applicants for grants shall identify the neighborhood or neighborhoods whose children and families will be served by a family resource center. The decision-making process for identifying and establishing family resource centers shall reflect the racial and socioeconomic diversity of the neighborhood or neighborhoods to be served.

(c) A grant application shall include a process for assessing on an annual basis the success of the local plan in addressing problems. (1994, Ex. Sess., c. 24, s. 31(a).)

§ 143B-152.13. Grants review and selection.

(a) The Department shall develop and disseminate a request for applications and establish procedures to be followed in developing and submitting applications to establish local family resource centers and administering grants to establish local family resource centers.

(b) The Secretary of Human Resources shall appoint a State task force to assist the Secretary in reviewing grant applications. The State task force shall include representatives of the Department of Human Resources, the Department of Public Instruction, local school administrative units, educators, parents, the juvenile justice system, social services, and governmental agencies providing services to children, and other members the Secretary considers appropriate. In appointing the State task force, the Secretary shall consult with the Superintendent of Public Instruction in an effort to coordinate the membership of this State task force, the State task force appointed by the Secretary pursuant to G.S. 143B-152.5, and the State task force appointed by the Superintendent pursuant to G.S. 115C-238.42.

In reviewing grant applications, the Secretary and the State task force may consider (i) the severity of the local problems as determined by the needs assessment data, (ii) the likelihood that the locally designed plan will result in high quality services for children and their families, (iii) evidence of local collaboration and coordination of services, (iv) any innovative or experimental aspects of the plan that will make it a useful model for replication in other counties, (v) the availability of other resources or funds, (vi) the incidence of crime and juvenile delinquency, (vii) the amount needed to implement the proposal, and (viii) any other factors consistent with the intent of this Part.

(c) In determining the amount of funds an applicant receives, the Secretary and the State task force may consider (i) the number of children to be served, (ii) the number and percentage of children to be served who participate in the subsidized lunch program, (iii) the number and percentage of school-aged children to be served with two working parents or one single parent, (iv) the availability of other resources or funds, and (v) the amount needed to implement the proposal.

(d) The Secretary shall award the grants. (1994, Ex. Sess., c. 24, s. 31(a).)

§ 143B-152.14. Cooperation of State and local agencies.

All agencies of the State and local government, including departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Human Resources, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Human Resources, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program. (1994, Ex. Sess., c. 24, s. 31(a).)

§ 143B-152.15. Program evaluation; reporting requirements.

(a) The Department of Human Resources shall develop and implement an evaluation system that will assess the efficiency and effectiveness of the Family Resource Center Grant Program. The department shall design this system to:

(1) Provide information to the Department and to the General Assembly on how to improve and refine the programs;
(2) Enable the Department and the General Assembly to assess the overall quality, efficiency, and impact of the existing programs;
(3) Enable the Department and the General Assembly to determine whether to modify the Family Resource Center Grant Program; and
(4) Provide a detailed fiscal analysis of how State funds for these programs were used.

(b) The Department shall report to the General Assembly and the Joint Legislative Commission on Governmental Operations by May 15, 1994, on its progress in developing the evaluation system and in developing and implementing the program. It shall report prior to February 1, 1995, on the evaluation system developed by the Department and on program implementation. The Department shall present an annual report on October 1, 1995, and annually thereafter to the General Assembly and to the Joint Legislative Commission on Governmental Operations on the implementation of the program and the results of the program evaluation.

(c) A local 501(c)(3) entity or consortium that receives a grant under this Part shall report by August 1 of each year to the Department on the implementation of the program. This report shall demonstrate the extent to which the local family resource center has met the local needs, goals, and anticipated outcomes as set forth in the grant application. (1994, Ex. Sess., c. 24, s. 31(a).)

Part 6. Social Services Commission.

§ 143B-153. Social Services Commission — creation, powers and duties.

There is hereby created the Social Services Commission of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article. Provided, however, the Department of Human Resources shall have the power and duty to adopt rules and regulations to be followed in the conduct of the State's medical assistance program.

(1) The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Human Resources as provided in Chapter 108A of the General Statutes of the State of North Carolina.

(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;

c. For the placement and supervision of dependent and delinquent children and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48; and

d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social services.

(2a) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For social services programs established by federal legislation and by Article 3 of G.S. Chapter 108A;

b. For implementation of Title XX of the Social Security Act, except for Title XX services provided solely

through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, by promulgating rules and regulations in the following areas:
1. Eligibility for all services established under a Comprehensive Annual Services Plan, as required by federal law;
2. Standards to implement all services established under the Comprehensive Annual Services Plan;
3. Maximum rates of payment for provision of social services;
4. Fees for services to be paid by recipients of social services;
5. Designation of certain mandated services, from among the services established by the Secretary below, which shall be provided in each county of the State; and
6. Title XX services for the blind, after consultation with the Commission for the Blind.

Provided, that the Secretary is authorized to promulgate all other rules in at least the following areas:
1. Establishment, identification, and definition of all services offered under the Comprehensive Annual Services Plan;
2. Policies governing the allocation, budgeting, and expenditures of funds administered by the Department;
3. Contracting for and purchasing services; and
4. Monitoring for effectiveness and compliance with State and federal law and regulations.

(3) The Social Services Commission shall have the power and duty to establish and adopt standards:
a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;
b. For the inspection and licensing of adult care homes for aged or disabled persons as provided by G.S. 131D-2(b) and for personnel requirements of staff employed in adult care homes adult care homes;
c. For the inspection and licensing of child-care institutions as provided by G.S. 131D-10.5;
d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;
e. Repealed by Session Laws 1981, c. 562, s. 7.
f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina.

(4) The Social Services Commission shall have the power and duty to authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.

(5) The Social Services Commission shall have the power and duty to ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assis-

tance and service to the residents and nonresidents of the State.

(6) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government of grants-in-aid for social services purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(7) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Social Services shall remain in full force and effect unless and until repealed or superseded by action of the Social Services Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources.

(8) The Commission may establish by regulation, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, rates or fees for:

a. A fee schedule for the payment of the costs of necessary day care in licensed facilities and registered plans for minor children of needy families.

b. A fee schedule for the payment by recipients for services which are established in accordance with Title XX of the Social Security Act and implementing regulations; and

c. The payment of an administrative fee not to exceed two hundred dollars ($200.00) to be paid by public or nonprofit agencies which employ students under the Plan Assuring College Education (PACE) program.

d. Child support enforcement services as defined by G.S. 110-130.1. (1973, c. 476, s. 134; 1975, c. 747, s. 2; 1977, c. 674, s. 7; 1977, 2nd Sess., c. 1219, ss. 26, 27; 1981, c. 275, s. 5; c. 562, s. 7; c. 961, ss. 1-3; 1983, c. 278, ss. 1, 2; c. 527, s. 2; 1985, c. 206; c. 479, s. 96; c. 689, s. 29f; 1991, c. 462, s. 1; c. 636, s. 19(d); c. 689, s. 105; c. 761, s. 28; 1993, c. 553, s. 46; 1995, c. 449, s. 4; c. 535, s. 32.)

Editor's Note. — Subdivision (3)b. of this section was amended by Session Laws 1995, c. 535, s. 32 in the coded bill drafting format provided by § 120-20.1. The act failed to incorporate the changes in subdivision (3)b. made by Session Laws 1995, c. 449, s. 4. Subdivision (3)b. is set out in the form above at the direction of the Revisor of Statutes.

Session Laws 1995, c. 449, s. 5, provides for the Department to report on the implementation of that act, which amended this section, to the North Carolina Study Commission on Aging, and to evaluate the effects of the act and report to the Joint Legislative Commission on Governmental Operation and the Study Commission on Aging on the feasibility of continuing the requirements of the act.

Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — Session Laws 1995, c. 449, s. 4, effective July 18, 1995, deleted the second sentence in subdivision (3)b. regarding review by the Joint Legislative Commission on Governmental Operations of proposed personnel requirements that would impose additional costs on owners of domiciliary homes.

Session Laws 1995, c. 535, s. 32, effective October 1, 1995, substituted "adult care homes" for "domiciliary homes" three times in subdivision (3)b.

Part 10A. Child Day-Care Commission.

§ 143B-168.4. (Applicable January 1, 1997) Child Day-Care Commission — members; selection; quorum.

(a) The Child Day-Care Commission of the Department of Human Resources shall consist of 15 members. Seven of the members shall be appointed by the Governor and eight by the General Assembly, four upon the recommendation of the President Pro Tempore of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. Four of the members appointed by the Governor, two by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on the recommendation of the Speaker of the House of Representatives, shall be members of the public who are not employed in, or providing, day care and who have no financial interest in a day care facility or home. Two of the foregoing public members appointed by the Governor, one of the foregoing public members recommended by the President Pro Tempore of the Senate, and one of the foregoing public members recommended by the Speaker of the House of Representatives shall be parents of children receiving day care services. Of the remaining two public members appointed by the Governor, one shall be a pediatrician currently licensed to practice in North Carolina. Three of the members appointed by the Governor shall be day care providers, one of whom shall be affiliated with a for profit day care facility, one of whom shall be affiliated with a for profit day care home, and one of whom shall be affiliated with a nonprofit home or facility. Two of the members appointed by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on recommendation of the Speaker of the House of Representatives, shall be day care providers, one affiliated with a for profit day care facility or home, and one affiliated with a nonprofit day care facility or home. None may be employees of the State.

(b) Members shall be appointed as follows:

(1) Of the Governor's initial appointees, four shall be appointed for terms expiring June 30, 1986, and three shall be appointed for terms expiring June 30, 1987;

(2) Of the General Assembly's initial appointees appointed upon recommendation of the President of the Senate, two shall be appointed for terms expiring June 30, 1986, and two shall be appointed for terms expiring June 30, 1987;

(3) Of the General Assembly's initial appointees appointed upon recommendation of the Speaker of the House of Representatives, two shall be appointed for terms expiring June 30, 1986, and two shall be appointed for terms expiring June 30, 1987.

Appointments by the General Assembly shall be made in accordance with G.S. 120-121. After the initial appointees' terms have expired,

§ 143B-168.4 has a delayed applicability date. See notes.

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all members shall be appointed to serve two-year terms. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

(c) A vacancy occurring during a term of office is filled:

(1) By the Governor, if the Governor made the initial appointment;

(2) By the General Assembly, if the General Assembly made the initial appointment in accordance with G.S. 120-122.

At its first meeting the Commission members shall elect a chairman to serve a two-year term. Chairmen shall be elected for two-year terms thereafter. The same member may serve as chairman for two consecutive terms.

Commission members may be reappointed and may succeed themselves for a maximum of four consecutive terms.

The Commission shall meet quarterly, and at other times at the call of the chairman or upon written request of at least six members.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1985, c. 757, s. 155(a); 1987 (Reg. Sess., 1988), c. 896; 1989, c. 342; 1995, c. 490, s. 10.)

For this section as applicable until January 1, 1997, see the main volume.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added the subsection (a), (b) and (c) designations; and added "Pro Tempore" throughout subsection (a). For the applicability of this amendment, see editor's note.

Part 10B. Early Childhood Initiatives.

§ 143B-168.10. Early childhood initiatives; findings.

Editor's Note. —

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 23.12, provides that the General Assembly finds, in consultation with the Governor, that it is essential to develop comprehensive programs that provide high quality early childhood education and development services locally, and that these programs be developed in a manner that will provide quality assurance and performance-based accountability; and further provides that the Department of Human Resources shall develop and implement a performance-based evaluation system to evaluate the Early Childhood Education and Development Initiatives authorized by Part 10B of Article 3 of Chapter 143B of the General Statutes, and provides for the design of the system by the Department.

Session Laws 1995, s. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 324, s. 23.13, provides: "Counties participating in the Early Childhood Education and Development Initiatives authorized by Part 10B of Article 3 of Chapter 143B of the General Statutes may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Educational Development Initiatives Plan as approved by the Department of Human Resources. The use of federal funds shall be consistent with the appropriate federal regulations. Day care providers shall, at a minimum, comply with the applicable requirements for Sate licensure or registration pursuant to Article 7 of Chapter 110 of the General Statues, with other applicable requirements of State law or rule, including rules adopted for nonregistered day care by the Social Services Commission, and with applicable federal regulations."

Session Laws 1995, c. 324, s. 27A, provides the terms and conditions to which the Early Childhood Education and Development Initiatives under Part 10B of Article 3 of chapter 143B of the General Statutes are subject for the 1995-97 fiscal biennium.

§ 143B-168.11. Early childhood initiatives; purpose; definitions.

(a) The purpose of this Part is to establish a framework whereby the General Assembly, upon consultation with the Governor, may support through financial and other means, the North Carolina Partnership for Children, Inc. and comparable local partnerships, which have as their missions the development of a comprehensive, long-range strategic plan for early childhood development and the provision, through public and private means, of high-quality early childhood education and development services for children and families. It is the intent of the General Assembly that communities be given the maximum flexibility and discretion practicable in developing their plans.

(b) The following definitions apply in this Part:

(1) Board of Directors. — The Board of Directors of the North Carolina Partnership for Children, Inc.

(2) Department. — The Department of Human Resources.

(3) Local Partnership. — A local, private, nonprofit 501(c)(3) organization established to coordinate a local demonstration project under this Part.

(4) North Carolina Partnership. — The North Carolina Partnership for Children, Inc.

(5) Secretary. — The Secretary of Human Resources. (1993, c. 321, s. 254(a); 1993 (Reg. Sess., 1994), c. 766, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, substituted "purpose; definitions" for "intent, North Carolina Partnership for Children, Inc." in the catchline of this section; rewrote subsection (a); and added subsection (b).

§ 143B-168.12. North Carolina Partnership for Children, Inc.; conditions.

(a) In order to receive State funds, the following conditions shall be met:

(1) Members of the Board of Directors shall consist of the following 39 members:
  a. The Secretary of Human Resources, ex officio;
  b. The Secretary of Environment, Health, and Natural Resources, ex officio;
  c. The Superintendent of Public Instruction, ex officio;
  d. The President of the Department of Community Colleges, ex officio;
  e. One resident from each of the 1st, 3rd, 5th, 7th, 9th, and 11th Congressional Districts, appointed by the President Pro Tempore of the Senate;
  f. One resident from each of the 2nd, 4th, 6th, 8th, 10th, and 12th Congressional Districts, appointed by the Speaker of the House of Representatives;
  g. Seventeen members, of whom four shall be members of the party other than the Governor's party, appointed by the Governor;
  h. The President Pro Tempore of the Senate, or a designee;
  i. The Speaker of the House of Representatives, or a designee;
  j. The Majority Leader of the Senate, or a designee;
  k. The Majority Leader of the House of Representatives, or a designee;
  l. The Minority Leader of the Senate, or a designee; and
  m. The Minority Leader of the House of Representatives, or a designee.

(2) The North Carolina Partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.

(3) The North Carolina Partnership shall oversee the development and implementation of the local demonstration projects as they are selected.

(b) The North Carolina Partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the North Carolina Partnership. (1993, c. 321, s. 254(a); 1993 (Reg. Sess., 1994), c. 766, s. 1; 1995, c. 324, s. 27A.1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 25.33, provides that the Department of Human Resources, in cooperation with the North Carolina Partnership for Children, Inc., shall ensure that the selection process for the additional local demonstration projects for the Early Childhood Education and Development Initiatives funded in the act shall include (1) acceptance of applications from counties that have not yet applied for funding, (2) acceptance of additional information from counties that have already applied, and (3) consideration of the needs and resources assessment that has been conducted in each county.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and

Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, rewrote this section.

The 1995 amendment, effective July 1, 1995, in subdivision (a)(1) substituted "39" for "33" in the introductory language, added subdivisions (a)(1)h. through (a)(1)m., and made punctuation and stylistic changes.

§ 143B-168.13. Implementation of program; duties of Department and Secretary.

(a) The Department shall:

(1) Develop a statewide process, in cooperation with the North Carolina Partnership, to select the local demonstration projects. The first 12 local demonstration projects developed and implemented shall be located in the 12 congressional districts, one to a district. The locations of subsequent selections of local demonstration projects shall represent the various geographic areas of the State.

(2) Develop, in cooperation with the North Carolina Partnership, a needs and resource assessment for each county. Of the funds appropriated to it to implement this Part, the Department may make available funds to each county for one year to an appropriate private nonprofit entity or to the county to perform this assessment.

(3) Provide technical and administrative assistance to local partnerships, particularly during the first year after they are selected under this Part to receive State funds. The Department, at any time, may authorize the North Carolina Partnership or a governmental or public entity to do the contracting for one or more local partnerships. After a local partnership's first year, the Department may allow the partnership to contract for itself.

(4) Adopt, in cooperation with the North Carolina Partnership, any rules necessary to implement this Part, including rules to ensure that no State funds or local funds used to supplant these State funds shall be used for personnel sick leave and annual leave benefits not allowed to State employees. In order to allow local partnerships to focus on the development of long-range plans in their initial year of funding, the Department may adopt rules that limit the categories of direct services for young children and their families for which funds are made available during the initial year.

(5) Report (i) quarterly to the Joint Legislative Commission on Governmental Operations and (ii) to the General Assembly and the Governor by April 1, 1994, and by March 1, 1995, on the ongoing results of all the local demonstration projects' work, including all details of the use to which the allocations were put, and on the continuing plans of the

North Carolina Partnership and of the Department, together with legislative proposals, including proposals to implement the program statewide.

(b) The Secretary shall approve, upon recommendation of the North Carolina Partnership, all allocations of State funds to local demonstration projects. The Secretary also shall approve all local plans. (1993 (Reg. Sess., 1994), c. 766, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 766, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

§ 143B-168.14. Local partnerships; conditions.

(a) In order to receive State funds, the following conditions shall be met:

(1) Each local demonstration project shall be coordinated by a new local partnership responsible for developing a comprehensive, collaborative, long-range plan of services to children and families in the service-delivery area. The board of directors of each local partnership shall consist of members including representatives of public and private nonprofit health and human service agencies, day care providers, the business community, foundations, county and municipal governments, local education units, and families. The Department, in cooperation with the North Carolina Partnership, may specify in its requests for applications the local agencies that shall be represented on a local board of directors. No existing local, private, nonprofit 501(c)(3) organization, other than one established on or after July 1, 1993, and that meets the guidelines for local partnerships as established under this Part, shall be eligible to apply to serve as the local partnership for the purpose of this Part.

(2) Each local partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.

(3) Each local partnership shall adopt procedures to ensure that all personnel who provide services to young children and their families under this Part know and understand their responsibility to report suspected child abuse, neglect, or dependency, as defined in G.S. 7A-517.

(b) Each local partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the local partnerships. (1993 (Reg. Sess., 1994), c. 766, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 766, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

§ 143B-168.15. Use of State funds.

(a) State funds allocated to local projects for services to children and families shall be used to meet assessed needs, expand coverage, and improve the quality of these services. The local plan shall address the assessed needs of all children to the extent feasible. It is the intent of the General Assembly that the needs of both young children below poverty who remain in the home, as well as the needs of young children below poverty who require services beyond those offered in child care settings, be addressed. Therefore, as local partnerships address the assessed needs of all children, they should devote an appropriate amount of their State allocations, considering these needs and other available resources, to meet the needs of children below poverty and their families.

(b) Depending on local, regional, or statewide needs, funds may be used to support activities and services that shall be made available and accessible to providers, children, and families on a voluntary basis. Of the funds allocated to local partnerships that are designated by the Secretary for direct services, seventy-five percent (75%) shall be used for any one or more of the following activities and services:

(1) Child day care services, including:
  a. Child day care subsidies to reduce waiting lists;
  b. Raising the county child day care subsidy rate to the State market rate, if applicable, in return for improvements in the quality of child day care services;
  c. Raising the income eligibility for child day care subsidies to seventy-five percent (75%) of the State median family income;
  d. Start-up funding for child day care providers;
  e. Assistance to enable child day care providers to conform to licensing and building code requirements;
  f. Child day care resources and referral services;
  g. Enhancement of the quality of child day care provided;
  h. Technical assistance for child day care providers;
  i. Quality grants for child day care centers or family child day care homes;
  j. Expanded services or enhanced rates for children with special needs;
  k. Head Start services;
  l. Development of comprehensive child day care services that include child health and family support;
  m. Activities to reduce staff turnover;
  n. Activities to serve children with special needs;
  o. Transportation services related to providing child day care services;
  p. Evaluation of plan implementation of child day care services; and
  q. Needs and resources assessments for child day care services.

(2) Family- and child-centered services, including early childhood education and child development services, including:
  a. Enhancement of the quality of family- and child-centered services provided;
  b. Technical assistance for family- and child-centered services;

c. Needs and resource assessments for family- and child-centered services;
d. Home-centered services; and
e. Evaluation of plan implementation of family- and child-centered services.

(3) Other appropriate activities and services for child day care providers and for family- and child-centered services, including:
a. Staff and organizational development, leadership and administrative development, technology assisted education, and long-range planning; and
b. Procedures to ensure that infants and young children receive needed health, immunization, and related services.

(c) Long-term plans for local projects that do not receive their full allocation in the first year, other than those selected in 1993, should consider how to meet the assessed needs of low-income children and families within their neighborhoods or communities. These plans also should reflect a process to meet these needs as additional allocations and other resources are received.

(d) State funds designated by the Secretary for start-up and related activities may be used for capital expenses or to support activities and services for children, families, and providers. State funds designated by the Secretary to support activities and services for children, families, and providers shall not be used for major capital expenses unless the Secretary approves this use of State funds based upon a finding that a local partnership has demonstrated that (i) this use is a clear priority need for the local plan, (ii) it is necessary to enable the local partnership to provide services and activities to underserved children and families, and (iii) the local partnership will not otherwise be able to meet this priority need by using State or federal funds available to that county.

(e) State funds allocated to local partnerships shall not supplant current expenditures by counties on behalf of young children and their families, and maintenance of current efforts on behalf of these children and families shall be sustained. State funds shall not be applied without the Secretary's approval where State or federal funding sources, such as Head Start, are available or could be made available to that county. (1993 (Reg. Sess., 1994), c. 766, s. 1; 1995, c. 509, s. 97.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 766, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted "statewide" for "Statewide" in subsection (b).

§ 143B-168.16. Home-centered services; consent.

No home-centered services including home visits or in-home parenting training shall be allowed under this Part unless the written, informed consent of the participating parents authorizing the home-centered services is first obtained by the local partnership, educational institution, local school administrative unit, private school, not-for-profit organization, governmental agency, or other entity that is conducting the parenting program. The participating parents may revoke at any time their consent for the home-centered services.

The consent form shall contain a clear description of the program including (i) the activities and information to be provided by the program during the home visits, (ii) the number of expected home visits, (iii) any responsibilities of the parents, (iv) the fact, if applicable, that a record will be made and maintained on the home visits, (v) the fact that the parents may revoke at any time the consent, and (vi) any other information as may be necessary to convey to the parents a clear understanding of the program.

Parents at all times shall have access to any record maintained on home-centered services provided to their family and may place in that record a written response to any information with which they disagree that is in the record. (1993 (Reg. Sess., 1994), c. 766, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 766, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

Part 13. Council on Developmental Disabilities.

§ 143B-178. Council on Developmental Disabilities — definitions.

The following definitions apply to this Chapter:

(1) The term "developmental disability" means a severe, chronic disability of a person which:
- a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;
- c. Is likely to continue indefinitely;
- d. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
- e. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(2) The term "services for persons with developmental disabilities," as it is used in this Article, means:
- a. Alternative community living arrangement services, employment related activities, child development services, and case management services; and
- b. Any other specialized services or special adaptations of generic services including diagnosis, evaluation, treatment, personal care, day care, adult care, special living arrangements, training, education, sheltered employment, recreation and socialization, counseling of the individual with such a disability and of his family, protective and other social and sociolegal services, information and referral services, follow-along services, nonvocational social-developmental services,

and transportation services necessary to assure delivery of services to persons with developmental disabilities, and services to promote and coordinate activities to prevent developmental disabilities. (1973, c. 476, s. 168; 1977, c. 881, ss. 1, 2; 1979, c. 752, s. 1; 1987, c. 780; 1995, c. 535, s. 33.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care" for "domiciliary care" in subdivision (2)b.

Part 14. Governor's Advisory Council on Aging; Division of Aging.

§ 143B-181. (Applicable January 1, 1997) Governor's Advisory Council on Aging — members; selection; quorum; compensation.

The Governor's Advisory Council on Aging of the Department of Human Resources shall consist of 33 members, 29 members to be appointed by the Governor, two members to be appointed by the President Pro Tempore of the Senate, and two members to be appointed by the Speaker of the House of Representatives. The composition of the Council shall be as follows: one representative of the Department of Administration; one representative of the Department of Cultural Resources; one representative of the Employment Security Commission; one representative of the Teachers' and State Employees' Retirement System; one representative of the Commissioner of Labor; one representative of the Department of Public Instruction; one representative of the Department of Environment, Health, and Natural Resources; one representative of the Department of Insurance; one representative of the Department of Crime Control and Public Safety; one representative of the Department of Community Colleges; one representative of the School of Public Health of The University of North Carolina; one representative of the School of Social Work of The University of North Carolina; one representative of the Agricultural Extension Service of North Carolina State University; one representative of the collective body of the Medical Society of North Carolina; and 19 members at large. The at large members shall be citizens who are knowledgeable about services supported through the Older Americans Act of 1965, as amended, and shall include persons with greatest economic or social need, minority older persons, and participants in programs under the Older Americans Act of 1965, as amended. The Governor shall appoint 15 members at large who meet these qualifications and are 60 years of age or older. The four remaining members at large, two of whom shall be appointed by the President Pro Tempore of the Senate and two of whom shall be appointed by the Speaker of the House of Representatives, shall be broadly representative of the major private agencies and organizations in the State who are experienced in or have demonstrated particular interest in the special concerns of older persons. At least one of each of the at-large appointments of the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be persons 60 years of age or older. The Council shall meet at least quarterly.

Members at large shall be appointed for four-year terms and until their successors are appointed and qualify. Ad interim appointments shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council as chairman to serve in such capacity at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 172; 1975, c. 128, ss. 1, 2; 1977, c. 242, s. 2; c. 771, s. 4; 1983, c. 40, s. 2; 1989, c. 727, s. 218(127); 1993, c. 522, s. 16; 1995, c. 490, s. 3.)

For this section as applicable until January 1, 1997, see the main volume.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment substituted "President Pro Tempore of the Senate" for "Lieutenant Governor" in the first, fifth and sixth sentences of the first paragraph. For the applicability of this amendment, see editor's note.

§ 143B-181.1A. Plan for serving older adults; inventory of existing data; cooperation by State agencies.

(a) The Division of Aging, Department of Human Resources shall submit a regularly updated plan to the General Assembly by March 1 of every other odd-numbered year, beginning March 1, 1995. This plan shall include:

(1) A detailed analysis of the needs of older adults in North Carolina, based on existing available data, including demographic, geographic, health, social, economical, and other pertinent indicators;

(2) A clear statement of the goals of the State's long-term public policy on aging;

(3) An analysis of services currently provided and an analysis of additional services needed; and

(4) Specific implementation recommendations on expansion and funding of current and additional services and services levels.

(b) The Division of Aging, Department of Human Resources, shall maintain an inventory of existing data sets regarding the elderly in North Carolina, in order to ensure that adequate demographic, geographic, health, social, economic, and other pertinent indicators are available to generate its regularly updated Plan for Serving Older Adults.

Upon request, the Division shall make information on these data sets available within a reasonable time.

All State agencies and entities that possess data relating to the elderly, including the Department of Human Resources' Division of Health Services, the Division of Facility Services, and the Division of Social Services, and the Department of Administration, shall cooperate, upon request, with the Division of Aging in implementing this subsection. (1989, c. 52, s. 1; c. 695, s. 1; 1995, c. 253, s. 1.)

Effect of Amendments. — The 1995 amendment, effective June 15, 1995, in subsection (a), in the first sentence inserted "other" preceding "odd-numbered" and added "beginning March 1, 1995" to the end of the sentence, and deleted the second sentence which read "Beginning March 1, 1991, a summary plan for serving older adults shall be submitted but the full plan only for 1991 shall be submitted to the General Assembly by July 1, 1991."

Part 14B. Long-Term Care.

§ 143B-181.9A: Repealed by Session Laws 1995, c. 179, s. 1, effective June 6, 1995.

Part 14C. Respite Care Program.

§ 143B-181.10. Respite care program established; eligibility; services; administration; payment rates.

(a) A respite care program is established to provide needed relief to caregivers of impaired adults who cannot be left alone because of mental or physical problems.

(b) Those eligible for respite care under the program established by this section are limited to those unpaid primary caregivers who are caring for people 60 years of age or older and their spouses, or those unpaid primary caregivers 60 years of age or older who are caring for persons 18 years of age or older, who require constant supervision and who cannot be left alone either because of memory impairment, physical immobility, or other problems that renders them unsafe alone.

(c) Respite care services provided by the programs established by this section may include:

(1) Counseling and training in the caregiving role, including coping mechanisms and behavior modification techniques;

(2) Counseling and accessing available local, regional, and State services;

(3) Support group development and facilitation;

(4) Assessment and care planning for the patient of the caregiver;

(5) Attendance and companion services for the patient in order to provide release time to the caregiver;

(6) Personal care services, including meal preparation, for the patient of the caregiver;

(7) Temporarily placing the person out of his home to provide the caregiver total respite when the mental or physical stress on the caregiver necessitates this type of respite.

Program funds may provide no more than the current adult care reimbursement rate for out of home placement. An out of home placement is defined as placement in a hospital, skilled or intermediate nursing facility, adult care home, adult day health center, or adult day care center. Duration of the service period may extend beyond a year.

(d) The respite care program established by this section shall be administered by the Division of Aging consistent with the policies and procedures of the Older Americans Act. The programs shall be coordinated with other appropriate Divisions in the Department of Human Resources, and with agencies and organizations concerned with the delivery of services to frail older adults and their unpaid caregivers. The Division shall choose respite care provider agencies in accordance with procedures outlined under the Older Americans Act and shall include the following criteria: documented capacity to provide care, adequacy of quality assurance, training, supervision, abuse prevention, complaint mechanisms, and cost. All funds allocated by the Division pursuant to this section shall be allocated on the same basis as funding under the Older Americans Act.

(e) Funding for the Division of Aging to administer this program shall not exceed the percentage allowed for administration as provided in the Older Americans Act but shall not be less than that budgeted for administration in fiscal year 1988-89.

(f) Unless prohibited by federal law, caregivers receiving respite care services through the program established by this section shall pay for some of the services on a sliding scale depending on their ability to pay. The Division of Aging, in consultation with the Councils of Governments in each region, shall specify rates of payment for the services. (1985 (Reg. Sess., 1986), c. 1014, s. 7.1; 1989, c. 500, s. 96(a); c. 770, s. 63; 1991, c. 332, s. 1; 1995, c. 535, s. 34.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care home" for "domiciliary home" in subsection (c).

Part 14D. Long-Term Care Ombudsman Program.

§ 143B-181.15. Long-Term Care Ombudsman Program/Office; policy.

The General Assembly finds that a significant number of older citizens of this State reside in long-term care facilities and are dependent on others to provide their care. It is the intent of the General Assembly to protect and improve the quality of care and life for residents through the establishment of a program to assist residents and providers in the resolution of complaints or common concerns, to promote community involvement and volunteerism in long-term care facilities, and to educate the public about the long-term care system. It is the further intent of the General Assembly that the Department of Human Resources, within available resources and pursuant to its duties under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., ensure that the quality of care and life for these residents is maintained, that necessary reports are made, and that, when necessary, corrective action is taken at the Department level. (1989, c. 403, s. 1; 1995, c. 254, s. 1.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, substituted "42 U.S.C. § 3001 et seq." for "42 U.S.C. § 3001-3057g" in the last sentence.

§ 143B-181.16. Long-Term Care Ombudsman Program/Office; definition.

Unless the content clearly requires otherwise, as used in this Article:

(1) "Long-term care facility" means any skilled nursing facility and intermediate care facility as defined in G.S. 131A-3(4) or any adult care home as defined in G.S. 131D-20(2).

(2) "Resident" means any person who is receiving treatment or care in any long-term care facility.

(3) "State Ombudsman" means the State Ombudsman as defined by the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., who carries out the duties and functions established by this Article.

(4) "Regional Ombudsman" means a person employed by an Area Agency on Aging to carry out the functions of the Regional Ombudsman Office established by this Article. (1989, c. 403, s. 1; 1995, c. 254, s. 2; c. 535, s. 35.)

Editor's Note. —

Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — Session Laws 1995, c. 254, s. 2, effective July 1, 1995, substituted "G.S. 131A-3(4)" for "G.S. 131A-(4)" in subdivision (1), and inserted "42 U.S.C. § 3001 et seq." in subdivision (3).

Session Laws 1995, c. 535, s. 35, effective October 1, 1995, substituted "G.S. 131A-3(4) or any adult care home" for "G.S. 131A-(4) or any domiciliary home" in subdivision (1).

§ 143B-181.18. Office of State Long-Term Care Ombudsman Program/State Ombudsman duties.

The State Ombudsman shall:

(1) Promote community involvement with long-term care providers and residents of long-term care facilities and serve as liaison between residents, residents' families, facility personnel, and facility administration;

(2) Supervise the Long-Term Care Program pursuant to rules adopted by the Secretary of the Department of Human Resources pursuant to G.S. 143B-10;

(3) Certify regional ombudsmen. Certification requirements shall include an internship, training in the aging process, complaint resolution, long-term care issues, mediation techniques, recruitment and training of volunteers, and relevant federal, State, and local laws, policies, and standards;

(4) Attempt to resolve complaints made by or on behalf of individuals who are residents of long-term care facilities, which complaints relate to administrative action that may adversely affect the health, safety, or welfare of residents;

(5) Provide training and technical assistance to regional ombudsmen;

(6) Establish procedures for appropriate access by regional ombudsmen to long-term care facilities and residents' records including procedures to protect the confidentiality of these records and to ensure that the identity of any complainant or resident will not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.;

(7) Analyze data relating to complaints and conditions in long-term care facilities to identify significant problems and recommend solutions;

(8) Prepare an annual report containing data and findings regarding the types of problems experienced and complaints reported by residents as well as recommendations for resolutions of identified long-term care issues;

(9) Prepare findings regarding public education and community involvement efforts and innovative programs being provided in long-term care facilities; and

(10) Provide information to public agencies, and through the State Ombudsman, to legislators, and others regarding problems encountered by residents or providers as well as recommendations for resolution. (1989, c. 403, s. 1; 1995, c. 254, s. 3.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, substituted "providers" for "provider" in subdivision (1); inserted a comma following "internship" in subdivision (3); and substituted "except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq." for "without the written consent of the complainant or resident or upon court order" in subdivision (6).

§ 143B-181.20. State/Regional Long-Term Care Ombudsman; authority to enter; cooperation of government agencies; communication with residents.

(a) The State and Regional Ombudsman may enter any long-term care facility and may have reasonable access to any resident in the reasonable pursuit of his function. The Ombudsman may communicate privately and confidentially with residents of the facility individually or in groups. The Ombudsman shall have access to the patient records as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., and under procedures established by the State Ombudsman pursuant to G.S. 143B-181.18(6). Entry shall be conducted in a manner that will not significantly disrupt the provision of nursing or other care to residents and if the long-term care facility requires registration of all visitors entering the facility, then the State or Regional Ombudsman must also register. Any State or Regional Ombudsman who discloses any information obtained from the patient's records except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., is guilty of a Class 1 misdemeanor.

(b) The State or Regional Ombudsman shall identify himself as such to the resident, and the resident has the right to refuse to communicate with the Ombudsman.

(c) The resident has the right to participate in planning any course of action to be taken on his behalf by the State or Regional Ombudsman, and the resident has the right to approve or disapprove any proposed action to be taken on his behalf by the Ombudsman.

(d) The State or Regional Ombudsman shall meet with the facility administrator or person in charge before any action is taken to allow the facility the opportunity to respond, provide additional information, or take appropriate action to resolve the concern.

(e) The State and Regional Ombudsman may obtain from any government agency, and this agency shall provide, that cooperation, assistance, services, data, and access to files and records that will enable the Ombudsman to properly perform his duties and exercise his powers, provided this information is not privileged by law.

(f) If the subject of the complaint involves suspected abuse, neglect, or exploitation, the State or Regional Ombudsman shall notify the county department of social services' Adult Protection Services section of the county department of social services, pursuant to Article 6 of Chapter 108A of the General Statutes. (1989, c. 403, s. 1; 1993, c. 539, s. 1038; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 254, s. 4.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1995 amendment, effective July 1, 1995, in subsection (a) rewrote the third sentence and in the last sentence substituted "records except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq." for "medical or personal financial records without a court order or without authorization in writing from the resident, or his legal representative".

§ 143B-181.22. State/Regional Long-Term Care Ombudsman; confidentiality.

The identity of any complainant, resident on whose behalf a complaint is made, or any individual providing information on behalf of the resident or complainant relevant to the attempted resolution of the complaint along with the information produced by the process of complaint resolution is confidential and shall be disclosed only as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq. (1989, c. 403, s. 1; 1995, c. 254, s. 5.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, rewrote this section.

§ 143B-181.25. Office of State/Regional Long-Term Care Ombudsman; penalty for willful interference.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 28. North Carolina Council on the Holocaust.

§ 143B-216.21. (Applicable January 1, 1997) Membership; selection; quorum.

The Council shall consist of 24 members, six appointed by the Governor, six appointed by the President Pro Tempore of the Senate, six appointed by the Speaker of the House of Representatives, and six appointed by the other 18 members. Members shall be appointed in 1985 for two-year terms to begin July 1, 1985. In 1987 and biennially thereafter, successors shall be appointed for two-year terms. The six at-large appointments shall be made by the Council at its first meeting after July 1 of each odd-numbered year. To be eligible for appointment as an at-large member, a person must either be a survivor of the Holocaust or a first-generation lineal descendant of such person. A majority of the members shall constitute a quorum for the transaction of business. (1985, c. 757, s. 81(a); 1989, c. 47; 1995, c. 490, s. 23.)

For this section as applicable until January 1, 1997, see the main volume.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the first sentence. For the applicability of this amendment, see editor's note.

ARTICLE 4.

Department of Revenue.

Part 1. General Provisions.

§ 143B-218.1. Report to Joint Legislative Commission on Governmental Operations.

The Department of Revenue shall report annually to the Joint Legislative Commission on Governmental Operations on the quality of services provided to taxpayers, including telephone and walk-in assistance and taxpayer education. (1993, c. 532, s. 13.)

Editor's Note. — Session Laws 1993, c. 532, s. 13 was codified as this section at the direction of the Revisor of Statutes. It was inadvertently omitted from the 1993 Cumulative Supplement.

ARTICLE 6.

Department of Correction.

Part 1. General Provisions.

§ 143B-261. Department of Correction — duties.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.10 provides the Departments of Transportation and Correction shall report, quarterly beginning October 1, 1994, to the Joint Legislative Transportation Oversight Committee on the implementation of the recommendations of the Inmate Labor Subcommittee.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 143B-264. Department of Correction — organization.

Editor's Note. — Session Laws 1993, c. 538, which amended this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Part 3. Parole Commission.

§ 143B-266. Post-Release Supervision and Parole Commission — creation, powers and duties.

(a) There is hereby created a Post-Release Supervision and Parole Commission of the Department of Correction with the authority to grant paroles, including both regular and temporary paroles, to persons held by virtue of any final order or judgment of any court of this State as provided in Chapter 148 of the General Statutes and laws of the State of North Carolina, except that persons sentenced under Article 81B of Chapter 15A of the General Statutes are not eligible for parole. The Commission shall also have authority to revoke, terminate, and suspend paroles of such persons (including persons placed on parole on or before the effective date of the

Executive Organization Act of 1973) and to assist the Governor in exercising his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency. The Commission shall also have authority to revoke and terminate persons on post-release supervision, as provided in Article 84A of Chapter 15A of the General Statutes.

(b) All releasing authority previously resting in the Commissioner and Commission of Correction with the exception of authority for extension of the limits of the place of confinement of a prisoner contained in G.S. 148-4 is hereby transferred to the Post-Release Supervision and Parole Commission. Specifically, such releasing authority includes work release (G.S. 148-33.1), indeterminate-sentence release (G.S. 148-42), and release of youthful offenders (G.S. 148-49.8), provided the individual considered for work release or indeterminate-sentence release shall have been recommended for release by the Secretary of Correction or his designee.

(c) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, in accordance with which prisoners eligible for parole consideration may have their cases reviewed and investigated and by which such proceedings may be initiated and considered. All rules and regulations heretofore adopted by the Board of Paroles shall remain in full force and effect unless and until repealed or superseded by action of the Post-Release Supervision and Parole Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Correction.

(d) The Commission is authorized and empowered to impose as a condition of parole or post-release supervision that restitution or reparation be made by the prisoner in accordance with the provisions of G.S. 148-57.1. The Commission is further authorized and empowered to make restitution or reparation a condition of work release in accordance with the provisions of G.S. 148-33.2. (1973, c. 1262, s. 8; 1975, c. 220; 1977, c. 614, s. 5; c. 732, s. 5; 1993, c. 538, s. 42; 1994, Ex. Sess., c. 21, s. 6; c. 24, s. 14(b).)

Editor's Note. —

Session Laws 1993, c. 538, which amended this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 21, which amended this section, in s. 6 provides: "This act becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective [October 1, 1994], and applies to offenses occurring on or after that date. Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal, expiration, or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. —

The 1994 Extra Session amendment by c. 21, s. 6, effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, in the first sentence of (a) deleted "for" preceding "persons sentenced under" and substituted "are not" for "only those sentenced to life imprisonment are" preceding "eligible for parole."

§ 143B-267. Post-Release Supervision and Parole Commission — members; selection; removal; chairman; compensation; quorum; services.

The Post-Release Supervision and Parole Commission shall consist of five full-time members. The five full-time members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The terms of office of the five members presently serving on the Commission shall expire on June 30, 1993. The terms of three members appointed effective July 1, 1993, shall be for three years. The terms of two members appointed effective July 1, 1993, shall be for four years. Thereafter, the terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a full-time member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Governor shall designate a full-time member of the Commission to serve as chairman of the Commission at the pleasure of the Governor.

With regard to the transaction of the business of the Commission the following procedure shall be followed: The chairman shall designate panels of two voting Commission members and shall designate a third commissioner to serve as an alternate member of a panel. Insofar as practicable, the chairman shall assign the members to panels in such fashion that each commissioner sits a substantially equal number of times with each other commissioner. Whenever any matter of business, such as the granting, denying, revoking or rescinding of parole, or the authorization of work-release privileges to a prisoner, shall come before the Commission for consideration and action, the chairman shall refer such matter to a panel. Action may be taken by concurring vote of the two sitting panel members. If there is not a concurring vote of the two panel members, the matter will be referred to the alternate member who shall cast the deciding vote. However, no person serving a sentence of life imprisonment shall be granted parole or work-release privileges except by majority vote of the full Commission.

The full-time members of the Commission shall receive the salary fixed by the General Assembly in the Current Operations Appropriations Act and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6.

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 9; 1977, c. 704, s. 1; 1979, c. 2; 1983, c. 709, s. 3; c. 717, s. 80; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1993, c. 337, s. 1; c. 538, s. 43; 1994, Ex. Sess., c. 14, s. 63; c. 24, s. 14(b).)

Editor's Note. — Session Laws 1993, c. 538, which amended this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1994 Extra Session amendment by c. 14, s. 63, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Commission" for "commission" at its second and fourth occurrences in the third paragraph.

Part 5. Substance Abuse Advisory Council.

§ 143B-270. Substance Abuse Advisory Council.

(a) There is created a Substance Abuse Advisory Council to consult with the Secretary of the Department of Correction in the administration of the Substance Abuse Program.

(b) **(Applicable until January 1, 1997)** The Council shall be composed of nine members. Three members shall be appointed by the Speaker of the House of Representatives, three members by the Lieutenant Governor, and three members by the Governor. Of each set of three members, the appointing authority shall appoint one person who is a member of the recovering community, one other person who is a professional in the field of substance abuse services, and one other person who is a member of the public at large. Vacancies shall be filled by the office making the initial appointment and for the remainder of the unexpired term only. The Council shall elect its chairman annually.

(b) **(Applicable January 1, 1997)** The Council shall be composed of nine members. Three members shall be appointed by the Speaker of the House of Representatives, three members by the President Pro Tempore of the Senate, and three members by the Governor. Of each set of three members, the appointing authority shall appoint one person who is a member of the recovering community, one other person who is a professional in the field of substance abuse services, and one other person who is a member of the public at large. Vacancies shall be filled by the office making the initial appointment and for the remainder of the unexpired term only. The Council shall elect its chairman annually.

(c) Members appointed shall hold office for a term of four years beginning on October 1, 1987, except that three of the initial appointees and these three appointees' immediate successors shall serve a term of two years, with the immediate successors' terms expiring on September 30, 1991. The Speaker, Lieutenant Governor, and Governor shall each select one of their initial appointees to serve a two-year term.

(d) The Council shall meet at least once each quarter and at the call of the Secretary.

(e) Council members who are members of the General Assembly shall receive travel and subsistence allowances as provided in G.S. 120-3.1. Council members who are not members of the General Assembly shall receive travel and subsistence as provided in G.S. 138-5. (1987, c. 738, s. 111(d); 1991, c. 405, s. 2; 1995, c. 490, s. 55.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is applicable until January 1, 1997. The second version of subsection (b) set out above is applicable January 1, 1997.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment substituted "President Pro Tempore of the Senate" for "Lieutenant Governor" in the second sentence of subsection (b). For the applicability of this amendment, see editor's note.

ARTICLE 6A.

North Carolina State-County Criminal Justice Partnership Act.

§ 143B-273. Short title.

Editor's Note. —

Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-273.5. State-County Criminal Justice Partnership Account established.

Editor's Note. — Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-273.8. Duties of Department of Correction.

Editor's Note. — Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-273.13. Application for implementation funding.

Editor's Note. — Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-273.14. Fundable programs; community-based corrections programs.

Editor's Note. — Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-273.15. Funding formula.

To determine the grant amount for which a county or counties may apply, the granting authority shall apply the following formula:

(1) Twenty percent (20%) of the total fiscal year appropriation plus any unspent or unclaimed funds in the Account shall be distributed in the discretion of the Secretary to encourage innovative efforts to develop multicounty projects; to encourage cooperation and collaboration among existing services and avoid duplication of efforts; to provide for technical assistance to the counties in the development of county plans and in the evaluation of programs funded under this Article; to encourage the renovation of existing facilities; and to encourage innovative substance abuse programs.

(2) Of the remaining eighty percent (80%) of the fiscal year appropriation, a total funding amount will be set for each county based upon the following variables:

a. Twenty percent (20%) based on a fixed equal dollar amount for each county;

b. Sixty percent (60%) based on the county share of the State population; and

c. Twenty percent (20%) based on the supervised probation admissions rate for the county.

The sum of the amounts in sub-subdivisions a., b., and c. is the total amount of the funding that a county may apply for under this subsection.

Grants to participating counties are for a period of one fiscal year with unobligated funds being returned to the Account at the end of the grant period. Funds are provided to participating counties on a reimbursement basis unless a county documents a need for an advance of grant funds. (1993, c. 534, s. 1; 1995, c. 324, s. 19.)

Editor's Note. — Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, redesignated subdivisions (a) and (b) as (1) and (2), and subdivisions (b)(1) through (b)(3) as (2)a. through (2)c.; in subdivision (1) substituted "fiscal year appropriation plus any unspent or unclaimed funds in the Account" for "fund", and added "to provide for technical assistance to the counties in the development of county plans and in the evaluation of programs funded under this Article"; in subdivision (2) substituted "fiscal year appropriation" for "fund" in the introductory language, and substituted "sub-subdivisions a., b., and c." for "subdivisions (1), (2), and (3)" in the sentence following subdivision (2)c.; and added the last two sentences of this section.

ARTICLE 7.

Department of Environment, Health, and Natural Resources.

Part 4. Environmental Management Commission.

§ 143B-282. Environmental Management Commission — creation; powers and duties.

Legal Periodicals. —

For comment, "Legal Analysis of the Constitutionality of the Water Supply Watershed Protection Act of 1989 and the Hyde Bill," see 29 Wake Forest L. Rev. 1279 (1994).

§ 143B-282.1. Environmental Management Commission — quasi-judicial powers; procedures.

(a) With respect to those matters within its jurisdiction, the Environmental Management Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Environmental Management Commission shall govern such proceedings:

(1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the chairman of the Commission.

(2) Oral arguments by the parties may be allowed by the chairman of the Commission upon request of the parties.

(3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the Natural resources of the State arising from the violation of standards or limitations established to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation;

(2) The duration and gravity of the violation;

(3) The effect on ground or surface water quantity or quality or on air quality;

(4) The cost of rectifying the damage;

(5) The amount of money saved by noncompliance;

(6) Whether the violation was committed willfully or intentionally;

(7) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority; and

(8) The cost to the State of the enforcement procedures.

(c) The chairman shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty Remissions may hear or vote on any matter in which he has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner;

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation;

(3) Whether the violation was inadvertent or a result of an accident;

(4) Whether the violator had been assessed civil penalties for any previous violations;

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations, and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment, Health, and Natural Resources shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) As used in this section, "Secretary" means the Secretary of Environment, Health, and Natural Resources. The Secretary may delegate his powers and duties under this section to the Director of the Division of Environmental Management of the Department of Environment, Health, and Natural Resources. (1989 (Reg. Sess., 1990), c. 1036, s. 2; 1993 (Reg. Sess., 1994), c. 570, s. 5.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and which shall not affect pending litigation, in subdivision (a)(3) substituted "a closed session" for "an executive session".

§ 143B-283. Environmental Management Commission — members; selection; removal; compensation; quorum; services.

(a) The Environmental Management Commission shall consist of 13 members appointed by the Governor. The Governor shall select the members so that the membership of the Commission shall consist of:

(1) One who shall be a licensed physician with specialized training and experience in the health effects of environmental pollution;

(2) One who shall, at the time of appointment, be actively connected with the Commission for Health Services or local board of health or have experience in health sciences;

(3) One who shall, at the time of appointment, be actively connected with or have had experience in agriculture;

(4) One who shall, at the time of appointment, be a registered engineer with specialized training and experience in water supply or water or air pollution control;

(5) One who shall, at the time of appointment, be actively connected with or have had experience in the fish and wildlife conservation activities of the State;

(6) One who shall, at the time of appointment, have special training and scientific expertise in hydrogeology or groundwater hydrology;

(7) Three members interested in water and air pollution control, appointed from the public at large;

(8) One who shall, at the time of appointment, be actively connected with industrial production or have had experience in the field of industrial air and water pollution control;

(9) One who shall, at the time of appointment, be actively connected with or have had experience in pollution control problems of municipal or county government;

(10) One who shall, at the time of appointment, have special training and scientific expertise in air pollution control and the effects of air pollution; and

(11) One who shall, at the time of appointment, have special training and scientific expertise in freshwater, estuarine, marine biological, or ecological sciences.

(b) Members so appointed shall serve terms of office of six years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications. The initial members of the Environmental Management Commission shall be those members of the present Board of Water and Air Resources who shall meet the above standards for membership on the Environmental Management Commission and who shall serve on the Environmental Management Commission for a period equal to the remainder of their current terms on the Board of Water and Air Resources, four of whose appointments expire June 30, 1975, five of whose appointments expire June 30, 1977, and four of whose appointments expire June 30, 1979. Any initial appointment to replace a member of the present Board of Water and Air Resources who does not meet the above standards for membership on the Environmental Management Commission shall be for a period equal to the replaced member's unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Environment, Health, and Natural Resources.

(c) Nine of the members appointed by the Governor under this section shall be persons who do not derive any significant portion of their income from persons subject to permits or enforcement orders under this Chapter. The Governor shall require adequate disclosure of potential conflicts of interest by members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this section, giving due regard to the requirements of federal legislation, and for this purpose may promulgate rules, regulations or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law.

(d) **(Applicable until January 1, 1997)** In addition to the members designated by subsection (a), the General Assembly shall appoint four members, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. The terms of initial appointees by the General Assembly shall expire on June 30, 1983. Thereafter, these members shall serve two-year terms.

(d) **(Applicable January 1, 1997)** In addition to the members designated by subsection (a), the General Assembly shall appoint four members, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General

§ 143B-283(d) is set out twice. See notes.

Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. The terms of initial appointees by the General Assembly shall expire on June 30, 1983. Thereafter, these members shall serve two-year terms. (1973, c. 1262, s. 20; 1977, c. 771, s. 4; 1979, 2nd Sess., c. 1158, ss. 5, 6; 1981 (Reg. Sess., 1982), c. 1191, s. 19; 1989, c. 315; c. 727, s. 218(129); 1995, c. 490, s. 18.)

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above is applicable until January 1, 1997. The second version of subsection (d) set out above is applicable January 1, 1997.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the first sentence of subsection (d). For the applicability of this amendment, see editor's note.

§ 143B-289.19. Office of Marine Affairs — creation.

There is created in the Department of Administration the Office of Marine Affairs. (1985, c. 202, s. 3; 1995, c. 509, s. 98.)

Editor's Note. — This section is former G.S. 143B-390.1, as recodified by Session Laws 1995, c. 509, s. 98. The historical citation to the former section has been added to this section as recodified.

Part 5B. Office of Marine Affairs.

Part 13. Parks and Recreation Council.

§§ 143B-311 through 143B-313: Repealed by Session Laws 1995, c. 456, s. 4, effective July 1, 1996.

For this part as in effect until July 1, 1996, see the main volume.

Part 13A. North Carolina Parks and Recreation Authority.

§ 143B-313.1. (Effective July 1, 1996) North Carolina Parks and Recreation Authority; creation; powers and duties.

The North Carolina Parks and Recreation Authority is created, to be administered by the Department of Environment, Health, and Natural Resources. The North Carolina Parks and Recreation Authority shall have at least the following powers and duties:

(1) To receive public and private donations, appropriations, grants, and revenues for deposit into the Parks and Recreation Trust Fund.

(2) To allocate funds for land acquisition from the Parks and Recreation Trust Fund.

(3) To allocate funds for repairs, renovations, improvements, construction, and other capital projects from the Parks and Recreation Trust Fund.

(4) To solicit financial and material support from public and private sources.

(5) To develop effective public and private support for the programs and operations of the parks and recreation areas.

(6) To consider and to advise the Secretary of Environment, Health, and Natural Resources on any matter the Secretary may refer to the North Carolina Parks and Recreation Authority. (1995, c. 456, s. 1.)

Editor's Note. — Session Laws 1995, c. 456, s. 6, made this Part effective July 1, 1996.

§ 143B-313.2. (Effective July 1, 1996) North Carolina Parks and Recreation Authority; members; selection; compensation; meetings.

(a) Membership. — The North Carolina Parks and Recreation Authority shall consist of nine members. The members shall include persons who are knowledgeable about park and recreation issues in North Carolina or with expertise in finance. Three members shall be appointed by the Governor, three members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and three members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The members shall serve at the pleasure of the appointing authority. The Governor shall appoint one of the members to be Chair of the North Carolina Parks and Recreation Authority. Vacancies shall be appointed by the original appointing authority, and the term shall be for the balance of the unexpired term. The North Carolina Parks and Recreation Authority shall meet at a time and place as designated by the Chair, but no less frequently than quarterly.

(b) Terms. — Members shall serve two-year terms. Members shall serve no more than two two-year terms.

(c) Compensation. — The members of the North Carolina Parks and Recreation Authority shall receive per diem and necessary travel and subsistence expenses according to the provisions of G.S. 138-5.

(d) Quorum. — A majority of the North Carolina Parks and Recreation Authority shall constitute a quorum for the transaction of business.

(e) Staff. — All clerical and other services required by the North Carolina Parks and Recreation Authority shall be provided by the Secretary of Environment, Health, and Natural Resources. (1995, c. 456, s. 1.)

Editor's Note. — Session Laws 1995, c. 456, s. 5, effective July 1, 1996, provides for the appointment and terms of the initial appointees of the North Carolina Parks and Recreation Authority, notwithstanding the provisions of subsection (b) of this section.

Part 22. North Carolina Zoological Park Council.

§ 143B-336.1. Special Zoo Fund.

A special continuing and nonreverting fund, to be called the Special Zoo Fund, is created. The North Carolina Zoological Park shall retain unbudgeted receipts at the end of each fiscal year, beginning June 30, 1989, and deposit these receipts into this Fund. This Fund shall be used for maintenance, repairs, and renovations of exhibits in existing habitat clusters and visitor services facilities, construction of visitor services facilities and support facilities such as greenhouses and temporary animal holding areas, and for the replacement of tram equipment as required to maintain adequate service to the public. The Special Zoo Fund may also be used to match private funds which are raised for these purposes. Funds may be expended for these purposes by the Department of Environment, Health, and Natural Resources on the advice of the North Carolina Zoological Park Council and with the approval of the Office of State Budget and Management. The Department of Environment, Health, and Natural Resources shall provide an annual report to the Office of State Budget and Management and to the Fiscal Research Division of the Legislative Services Office on the use of fees collected pursuant to this section. (1989, c. 752, s. 154; 1995, c. 324, s. 26.11.)

Editor's Note. — Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added "construction of visitor services facilities and support facilities such as greenhouses and temporary animal holding areas" in the third sentence.

Part 28. North Carolina Aquariums Commission.

§ 143B-344.17. North Carolina Aquariums Commission — organization, powers, and duties.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 26.8A, provides: "Notwithstanding the provisions of G.S. 143B-344.17, the Department of Environment, Health, and Natural Resources may use funds in the North Carolina Special Aquariums Fund for one full-time position at each aquarium site to collect admission fees and to maintain records of visitors at the sites and, during high visitation periods, for seasonal temporary positions at each site for additional maintenance, housekeeping, and educational services and to collect admission fees."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Part 29. Advisory Commission for North Carolina State Museum of Natural Sciences.

§ 143B-344.18. Commission created; membership.

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

ARTICLE 8.

Department of Transportation.

Part 1. General Provisions.

§ 143B-346. Department of Transportation — purpose and functions.

CASE NOTES

Duty to Use Due Care. — The law does not impose a duty on the individual employees of the Department of Transportation that extends to the general public, beyond the duty to use due care in the performance of the specific tasks they undertake. The duty owing to the public to maintain highways falls upon the Department of Transportation (DOT). Reid v. Roberts, 112 N.C. App. 222, 435 S.E.2d 116, cert. denied, 335 N.C. 559, 439 S.E.2d 151 (1993).

Part 2. Board of Transportation—Secondary Roads Council.

§ 143B-350. Board of Transportation — organization; powers and duties, etc.

(a) There is hereby created a Board of Transportation. The Board shall carry out its duties consistent with the needs of the State as a whole and it shall not sacrifice the general statewide interest to the purely local desires of any particular area. The Board may, from time to time, provide that one or more of its members or representatives shall hear any person or persons concerning transportation.

(b) The Board of Transportation shall have two ex officio members. The Secretary of Transportation shall be an ex officio member of the Board of Transportation and shall be the chairman of the Board of Transportation. The chairman of the North Carolina Rail Council shall be an ex officio member of the Board of Transportation.

(c) The Board of Transportation shall have 20 members appointed by the Governor. One member shall be appointed from each of the 14 transportation engineering divisions and six members shall be appointed from the State at large. One at-large member shall be a registered voter of a political party other than the political party of the Governor. At least one at-large member shall possess a broad knowledge of public transportation matters. No more than two members provided for in this subsection shall reside in the same engineering division while serving in office. The initial members shall serve terms beginning July 1, 1977, and ending January 14, 1981, or until their successors are appointed and qualified. The succeeding terms of office shall be for a period of four years beginning January 15, 1981, and each four years thereafter. The Governor shall have the authority to remove for cause sufficient to himself, any member appointed by the Governor.

(d) **(Applicable until January 1, 1997)** The Board of Transportation shall have two members appointed by the General Assembly. One of these members shall be appointed upon the recommendation of the Speaker of the House of Representatives, and one shall be appointed upon the recommendation of the President of the Senate in accordance with G.S. 120-121. The initial members appointed by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(d) **(Applicable January 1, 1997)** The Board of Transportation shall have two members appointed by the General Assembly. One of these members shall be appointed upon the recommendation of the Speaker of the House of Representatives, and one shall be appointed upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The initial members appointed by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(e) The Board of Transportation shall meet once in each 60 days at such regular meeting times as the Board may by rule provide and at any place in the State as the Board may provide. The Board may hold special meetings at any time at the call of the chairman or any three members. The Board shall have the power to adopt and enforce rules and regulations for the government of its business and proceedings. The Board shall keep minutes of its meetings, which shall at all times be open to public inspection. The majority of the Board shall constitute a quorum for the transaction of business. Board members shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(f) The Board of Transportation shall have duties and powers:

(1) To formulate policies and priorities for all modes of transportation under the Department of Transportation;

(2) To advise the Secretary on matters to achieve the maximum public benefit in the performance of the functions assigned to the Department;

(3) To ascertain the transportation needs and the alternative means to provide for these needs through an integrated system of transportation taking into consideration the social, economic and environmental impacts of the various alternatives.

(4) To approve a schedule of all major transportation improvement projects and their anticipated cost for a period of seven years into the future. This schedule is designated the Transportation Improvement Program; it must be published and copies must be available for distribution. The document that contains the Transportation Improvement Program, or a separate document that is published at the same time as the Transportation Improvement Program, must include the anticipated funding sources for the improvement projects included in the Program, a list of any changes made from the previous year's Program, and the reasons for the changes;

(5) To consider and advise the Secretary of Transportation upon any other transportation matter that the Secretary may refer to it;

(6) To assist the Secretary of Transportation in the performance of his duties in the development of programs and approve priorities for programs within the Department;

(7) To allocate all highway construction and maintenance funds appropriated by the General Assembly as well as federal-aid funds which may be available;

(8) To approve all highway construction programs;

(9) To approve all highway construction projects and construction plans for the construction of projects;

(10) To review all statewide maintenance functions;

(11) To award all highway construction contracts;

(12) To authorize the acquisition of rights-of-way for highway improvement projects, including the authorization for acquisition of property by eminent domain;

(13) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

The ability of a municipality to pay in part or whole for any transportation improvement project shall not be a factor considered by the Board of Transportation in its development and approval of a schedule of major State highway system improvement projects to be undertaken by the Department under G.S. 143B-350(f)(4).

(g) The Board of Transportation may, in its discretion, delegate to the Secretary of Transportation the authority:

(1) To approve all highway construction projects and construction plans for the construction of projects;

(2) To award all highway construction contracts;

(3) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

The Secretary may, in turn, subdelegate these duties and powers.

(h) Each member of the Board of Transportation who is appointed to represent a transportation engineering division or who resides in a division shall be consulted before the Board makes a decision affecting that division. (1975, c. 716, s. 1; 1977, c. 464, s. 6; 1981 (Reg. Sess., 1982), c. 1191, ss. 9, 10; 1985, c. 479, s. 185; 1987, c. 738, s. 170(b), (c); c. 747, s. 4.1; 1989, c. 500, s. 53; c. 692, s. 1.10; 1993, c. 483, s. 4; 1995, c. 490, s. 60.)

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above is applicable until January 1, 1997. The second version of subsection

(d) set out above is applicable January 1, 1997.

Editor's Note. —

Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the second sentence of subsection (d). For the applicability of this amendment, see editor's note.

ARTICLE 9.

Department of Administration.

Part 1. General Provisions.

§ 143B-367. Duties of the Department.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 11.6 provides in part that the North Carolina Day Care Facility Task Force is created within the Department of Administration, which shall develop a day care facility upon the advice and recommendation of the Day Care Facility Task Force.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Part 2. State Goals and Policy Board.

§§ 143B-371, 143B-372: Repealed by Session Laws 1995, c. 117, s. 2, effective May 29, 1995.

Part 2A. North Carolina Progress Board.

§ 143B-372.1. North Carolina Progress Board.

(a) There is established within the Department of Administration the North Carolina Progress Board. The Board shall be located administratively in the Department of Administration but shall exercise all its prescribed statutory powers independently of the Department of Administration.

(b) The North Carolina Progress Board shall consist of 14 members as follows:

(1) The Governor, ex officio;
(2) Seven persons appointed by the Governor, none of whom shall be State employees or officers;
(3) Three persons appointed by the Speaker of the House of Representatives; and
(4) Three persons appointed by the President Pro Tempore of the Senate.

(c) The Governor shall be chair of the North Carolina Progress Board. The Governor shall appoint a vice-chair from among the membership of the North Carolina Progress Board to serve at the pleasure of the Governor. The North Carolina Progress Board may elect such other officers as it sees fit.

(d) The North Carolina Progress Board shall meet at least twice annually on the call of the chair or as additionally provided by the North Carolina Progress Board. A quorum is eight members of the Board. Members may not send designees to board meetings, nor may they vote by proxy.

(e) Initial appointments shall be for terms to begin July 1, 1995. Of the Governor's appointments, four shall be for two-year terms and three shall be for four-year terms. Of the appointments made by the Speaker of the House of Representatives and the President Pro Tempore of the Senate, one shall be for a two-year term and two shall be for a four-year term. As terms expire, successors shall be appointed for four-year terms.

(f) No member may be appointed to more than two consecutive terms. A member of the House of Representatives appointed by the Speaker of the House vacates membership on the North Carolina Progress Board when that person is no longer a member of the House of Representatives, except that if that person is in office at the expiration of the term of office in the House of Representatives but has not been elected to the next term, that person shall continue to serve until the convening of the regular session. A member of the Senate appointed by the President Pro Tempore of the Senate vacates membership on the North Carolina Progress Board when that person is no longer a member of the Senate, except that if that person is in office at the expiration of the term of office in the Senate but has not been elected to the next term, that person shall continue to serve until the convening of the regular session. (1995, c. 117, s. 1.)

Editor's Note. — Session Laws 1995, c. 117, s. 3 provides that no additional funds are appropriated to implement this act and that members may be appointed upon ratification of this act (May 29, 1995) for terms to commence July 1, 1995.

Session Laws 1995, c. 117, s. 4, made this part effective upon ratification. The Act was ratified May 29, 1995.

§ 143B-372.2. Responsibilities.

(a) The General Assembly notes that the Commission for a Competitive North Carolina developed goals in the following categories:

(1) Healthy Children and Families;
(2) Quality Education for All;
(3) A High Performance Workforce;
(4) A Prosperous Economy;
(5) A Sustainable Environment;
(6) Technology and Infrastructure Development;
(7) Safe and Vibrant Communities; and
(8) Active Citizenship/Accountable Government.

The Commission for a Competitive North Carolina adopted a report which established major goals and ways to measure progress toward these goals.

(b) The General Assembly finds that:

(1) The North Carolina economy of the future can provide unparalleled opportunity while maintaining North Caroli-

na's traditional values, if the State pursues the future with clarity of purpose and perseverance;

(2) The North Carolina economy is in the midst of a massive transition created by technological changes, global competition, and new production practices; and

(3) In order to maintain employment opportunities, increase income levels, reduce poverty, and generate the public revenues necessary to provide public services, North Carolina must increasingly rely on an economy which adds value to its natural and human resources and provides a diverse mix of products.

(c) The North Carolina Progress Board shall:

(1) Encourage the discussion and understanding of critical global and national social and economic trends that will affect North Carolina in the coming decades;

(2) Examine the report of the Commission for a Competitive North Carolina;

(3) Track the eight issue areas set out in subsection (a) of this section;

(4) Hold public hearings and other methods of public participation to secure the views of citizens on priority goals for North Carolina;

(5) Formulate and submit to North Carolinians a report that describes and explains a vision for North Carolina's progress over the next 20 to 30 years;

(6) Submit to the 1997 Regular Session of the General Assembly prior to its convening, specific targets and milestones to accomplish its mission;

(7) Recommend how the targets and milestones can be applied to increase the accountability of government to the people of this State; and

(8) Report periodically to the people of North Carolina on progress toward meeting goals, targets, and milestones.

(d) The Regular Session of the General Assembly shall further define the mission of the North Carolina Progress Board in continuing its work.

(e) The General Assembly, after adopting the initial set of goals and measures as proposed or amended, may alter the goals and measures. (1995, c. 117, s. 1.)

§ 143B-372.3. Staff.

(a) The North Carolina Progress Board may hire an executive director, who may be dismissed by the North Carolina Progress Board. The Executive Director shall report to the North Carolina Progress Board. The Executive Director shall hire support staff and may dismiss them.

(b) There may be an Executive Staff Committee to assist the North Carolina Progress Board which shall consist of the Executive Director, if hired, the State Budget Officer, the State Planning Officer, and the Director of Fiscal Research.

(c) The State Budget Office and the State Planning Office shall also provide staff support to the North Carolina Progress Board. (1995, c. 117, s. 1.)

Part 8A. Office of Marine Affairs.

§ 143B-390.1: Recodified as § 143B-289.19 by Session Laws 1995, c. 509, s. 98, effective July 29, 1995.

Part 9. North Carolina Human Relations Commission.

§ 143B-392. North Carolina Human Relations Commission — Members; selection; quorum; compensation.

(a) **(Applicable until January 1, 1997)** The Human Relations Commission of the Department of Administration shall consist of 21 members. The Governor shall appoint one member from each of the 12 congressional districts, plus five members at large, including the chairperson. The Speaker of the North Carolina House of Representatives shall appoint two members to the Commission. The Lieutenant Governor shall appoint two members to the Commission. The terms of four of the members appointed by the Governor shall expire June 30, 1988. The terms of four of the members appointed by the Governor shall expire June 30, 1987. The terms of four of the members appointed by the Governor shall expire June 30, 1986. The terms of four of the members appointed by the Governor shall expire June 30, 1985. The terms of the members appointed by the Speaker of the North Carolina House of Representatives shall expire June 30, 1986. The terms of the members appointed by the Lieutenant Governor shall expire June 30, 1986. The initial term of office of the person appointed to represent the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996. At the end of the respective terms of office of the initial members of the Commission, the appointment of their successors shall be for terms of four years. No member of the commission shall serve more than two consecutive terms. A member having served two consecutive terms shall be eligible for reappointment one year after the expiration of his second term. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be filled in the manner of the original appointment for the unexpired term.

(a) **(Applicable January 1, 1997)** The Human Relations Commission of the Department of Administration shall consist of 21 members. The Governor shall appoint one member from each of the 12 congressional districts, plus five members at large, including the chairperson. The Speaker of the North Carolina House of Representatives shall appoint two members to the Commission. The President Pro Tempore of the Senate shall appoint two members to the Commission. The terms of four of the members appointed by the Governor shall expire June 30, 1988. The terms of four of the members appointed by the Governor shall expire June 30, 1987. The terms of four of the members appointed by the Governor shall expire June 30, 1986. The terms of four of the members appointed by the Governor shall expire June 30, 1985. The terms of the members appointed by the Speaker of the North Carolina House of Representatives shall expire June 30, 1986. The terms of the members appointed by the Lieutenant Governor shall expire June 30, 1986.

§ 143B-392(a) is set out twice. See notes.

The initial term of office of the person appointed to represent the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996. At the end of the respective terms of office of the initial members of the Commission, the appointment of their successors shall be for terms of four years. No member of the commission shall serve more than two consecutive terms. A member having served two consecutive terms shall be eligible for reappointment one year after the expiration of his second term. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be filled in the manner of the original appointment for the unexpired term.

(b) Members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(c) A majority of the Commission shall constitute a quorum for the transaction of business.

(d) All clerical and support services required by the Commission shall be supplied by the Secretary of the Department of Administration. (1975, c. 879, s. 35; 1983, c. 461; 1989 (Reg. Sess., 1990), c. 979, s. 1(7); 1991 (Reg. Sess., 1992), c. 1038, s. 20; 1995, c. 490, s. 26.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is applicable until January 1, 1997. The second version of subsection (a) set out above is applicable January 1, 1997.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment substituted "President Pro Tempore of the Senate" for "Lieutenant Governor" in the fourth sentence of subsection (a). For the applicability of this amendment, see editor's note.

Part 14A. Governor's Advocacy Council for Persons with Disabilities.

§ 143B-403.2. Governor's Advocacy Council for Persons with Disabilities — members; selection; quorum; compensation.

(a) **(Applicable until January 1, 1997)** The Governor's Advocacy Council for Persons with Disabilities of the Department of Administration shall consist of 21 members, appointed as follows:

(1) Seven members appointed by the Governor;

(2) Seven members appointed by the General Assembly upon the recommendation of the President of the Senate;

(3) Seven members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(a) **(Applicable January 1, 1997)** The Governor's Advocacy Council for Persons with Disabilities of the Department of Administration shall consist of 21 members, appointed as follows:

(1) Seven members appointed by the Governor;

§ 143B-403.2(a) is set out twice. See notes.

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(2) Seven members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate;

(3) Seven members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(b) Of the members appointed to the Council, at least 12 shall be disabled persons or family members of disabled persons, with representation as follows:

(1) One representative of persons associated with substance abuse, one representative of persons with sensory impairment, one representative of persons with physical disabilities, one person who shall serve as Chair of the Protection and Advocacy for the Mentally Ill Advisory Committee of the Governor's Advocacy Council for Persons with Disabilities, to be appointed by the Governor;

(2) One representative of persons with mental retardation, one representative of persons with developmental disabilities, one representative of persons with mental illness and one representative of persons with sensory impairment, to be appointed upon recommendation of the President of the Senate; and

(3) One representative of persons with mental retardation, one representative of persons with developmental disabilities, one representative of persons with mental illness, and one representative of persons with physical disabilities, to be appointed upon recommendation of the Speaker of the House of Representatives.

Appointments to the Council under the provisions of this subsection shall be made after consultation with and consideration of recommendations from statewide advocacy and membership organizations associated with persons covered by the federal Developmental Disabilities Assistance and Bill of Rights and the Protection and Advocacy for Mentally Ill Individuals Act.

(c) Members appointed to fit the representative categories shall be initially appointed as terms expire and as vacancies occur, until all categories are filled. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. An administrator in any branch of State government that delivers services to persons with disabilities is not eligible for membership on the Council.

(d) The initial term for three of the members appointed by the Governor shall be two years. The initial term for the remaining members appointed by the Governor shall be four years. At the end of the respective terms of office of the initial members of the Council, the appointment of all members shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be filled within 60 days after the date on which the vacancy occurs and shall be for the balance of the unexpired term. The initial members appointed by the General Assembly shall serve for terms to expire June 30, 1993. Subsequently, members appointed by the General Assembly shall serve two-year terms beginning July 1, 1993, and biennially thereafter.

The Governor may remove any member of the Council appointed by the Governor.

The Governor shall designate one member of the Council to serve as chair and one member to serve as vice-chair.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1977, c. 822, s. 1; 1979, c. 575; 1981 (Reg. Sess., 1982), c. 1191, ss. 23, 23.1; 1989, c. 121, s. 1; 1991, c. 608, s. 1; 1995, c. 490, s. 38.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is applicable until January 1, 1997. The second version of subsection (a) set out above is applicable January 1, 1997.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (a)(2). For the applicability of this amendment, see editor's note.

Part 15. North Carolina State Commission of Indian Affairs.

§ 143B-407. North Carolina State Commission of Indian Affairs — membership; term of office; chairman; compensation.

(a) **(Applicable until January 1, 1997)** The State Commission of Indian Affairs shall consist of two persons appointed by the General Assembly, the Secretary of Human Resources, the Director of the State Employment Security Commission, the Secretary of Administration, the Secretary of Environment, Health, and Natural Resources, the Commissioner of Labor or their designees and 18 representatives of the Indian community. These Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the Waccamaw-Siouan from Columbus and Bladen Counties; and the Native Americans located in Cumberland, Guilford and Mecklenburg Counties. The Coharie shall have two members; the Eastern Band of Cherokees, two; the Haliwa, two; the Lumbees, three; the Meherrin, one; the Waccamaw-Siouan, two; the Cumberland County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina Native Americans, two. Of the two appointments made by the General Assembly, one shall be made upon the recommendation of the Speaker, and one shall be made upon recommendation of the President of the Senate. Appointments by the General Assembly shall be made in accordance with G.S.

§ 143B-407(a) is set out twice. See notes.

120-121 and vacancies shall be filled in accordance with G.S. 120-122.

(a) **(Applicable January 1, 1997)** The State Commission of Indian Affairs shall consist of two persons appointed by the General Assembly, the Secretary of Human Resources, the Director of the State Employment Security Commission, the Secretary of Administration, the Secretary of Environment, Health, and Natural Resources, the Commissioner of Labor or their designees and 18 representatives of the Indian community. These Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the Waccamaw-Siouan from Columbus and Bladen Counties; and the Native Americans located in Cumberland, Guilford and Mecklenburg Counties. The Coharie shall have two members; the Eastern Band of Cherokees, two; the Haliwa, two; the Lumbees, three; the Meherrin, one; the Waccamaw-Siouan, two; the Cumberland County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina Native Americans, two. Of the two appointments made by the General Assembly, one shall be made upon the recommendation of the Speaker, and one shall be made upon recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121 and vacancies shall be filled in accordance with G.S. 120-122.

(b) Members serving by virtue of their office within State government shall serve so long as they hold that office. Members representing Indian tribes and groups shall be elected by the tribe or group concerned and shall serve for three-year terms except that at the first election of Commission members by tribes and groups one member from each tribe or group shall be elected to a one-year term, one member from each tribe or group to a two-year term, and one member from the Lumbees to a three-year term. Thereafter, all Commission members will be elected to three-year terms. All members shall hold their offices until their successors are appointed and qualified. Vacancies occurring on the Commission shall be filled by the tribal council or governing body concerned. Any member appointed to fill a vacancy shall be appointed for the remainder of the term of the member causing the vacancy. The Governor shall appoint a chairman of the Commission from among the Indian members of the Commission, subject to ratification by the full Commission. The initial appointments by the General Assembly shall expire on June 30, 1983. Thereafter, successors shall serve for terms of two years.

(c) Commission members who are seated by virtue of their office within the State government shall be compensated at the rate specified in G.S. 138-6. Commission members who are members of the General Assembly shall be compensated at the rate specified in G.S. 120-3.1. Indian members of the commission shall be compensated at the rate specified in G.S. 138-5. (1977, c. 771, s. 4; c. 849, s. 1; 1977, 2nd Sess., c. 1189; 1981, c. 47, s. 5; 1981 (Reg. Sess., 1982),

c. 1191, ss. 74, 76; 1989, c. 727, s. 218(149); 1991, c. 467, s. 1; 1995, c. 490, s. 27.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is applicable until January 1, 1997. The second version of subsection (a) set out above is applicable January 1, 1997.

Editor's Note. —

Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the next to last sentence of subsection (a). For the applicability of this amendment, see editor's note.

Part 18. North Carolina Internship Council.

§ 143B-417. North Carolina Internship Council — creation; powers and duties.

There is hereby created the North Carolina Internship Council of the Department of Administration. The North Carolina Internship Council shall have the following functions and duties:

(1) To determine the number of student interns to be allocated to each of the following offices or departments:
  a. Office of the Governor
  b. Department of Administration
  c. Department of Correction
  d. Department of Cultural Resources
  e. Department of Revenue
  f. Department of Transportation
  g. Department of Environment, Health, and Natural Resources
  h. Department of Commerce
  i. Department of Crime Control and Public Safety
  j. Department of Human Resources
  k. Office of the Lieutenant Governor
  l. Office of the Secretary of State
  m. Office of the State Auditor
  n. Office of the State Treasurer
  o. Department of Public Instruction
  p. Repealed by Session Laws 1985, c. 757, s. 162, effective July 1, 1985
  q. Department of Agriculture
  r. Department of Labor
  s. Department of Insurance
  t. Office of the Speaker of the House of Representatives
  u. Justices of the Supreme Court and Judges of the Court of Appeals
  v. Department of Community Colleges
  w. Office of State Personnel
  x. Office of the Senate President Pro Tempore;

(2) To screen applications for student internships and select from these applications the recipients of student internships; and

(3) To determine the appropriateness of proposals for projects for student interns submitted by the offices and depart-

ments enumerated in (1). (1977, c. 771, s. 4; c. 967; 1979, c. 783; 1983, c. 710; 1985, c. 757, s. 162; 1989, c. 727, s. 218(151), c. 751, s. 7(21); 1989 (Reg. Sess., 1990), c. 900, s. 1; 1991 (Reg. Sess., 1992), c. 959, s. 42; 1993, c. 522, s. 17.)

Editor's Note. — This section is set out to correct an omission and a misprint in the main pamphlet.

§ 143B-418. (Applicable January 1, 1997) North Carolina Internship Council — members; selection; quorum; compensation; clerical, etc., services.

The North Carolina Internship Council shall consist of 17 members, including the Secretary of Administration or his designee, one member to be designated by and to serve at the pleasure of the President Pro Tempore of the Senate, one member to be designated by and to serve at the pleasure of the Speaker of the House of Representatives and the following 14 members to be appointed by the Governor to a two-year term commencing on July 1 of odd-numbered years: two representatives of community colleges; four representatives of The University of North Carolina system; two representatives of private colleges or universities; three representatives of colleges or universities with an enrollment of less than 5,000 students; and three former interns.

At the end of the respective terms of office of the 14 members of the Council appointed by the Governor, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. The Governor may remove any member appointed by the Governor.

Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Council shall meet at the call of the chairman or upon written request of at least five members.

The Governor shall designate a member of the Council as chairman to serve at the pleasure of the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1977, c. 967; 1987, c. 564, s. 9; 1995, c. 490, s. 28.)

For this section as applicable until January 1, 1997, see the main volume.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment substituted "President Pro Tempore of the Senate" for "Lieutenant Governor" in the first paragraph. For the applicability of this amendment, see editor's note.

Part 22. North Carolina Agency for Public Telecommunications.

§ 143B-426.9. (Applicable January 1, 1997) North Carolina Agency for Public Telecommunications — creation; membership; appointments, terms and vacancies; officers; meetings and quorum; compensation.

The North Carolina Agency for Public Telecommunications is created. It is governed by the Board of Public Telecommunications Commissioners, composed of 27 members as follows:

(1) A Chairman appointed by, and serving at the pleasure of, the Governor;
(2) Ten at-large members, appointed by the Governor from the general public;
(3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121;
(4) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;
(5) The Secretary of Administration, ex officio;
(6) The Chairman of the Board of Trustees of The University of North Carolina Center for Public Television (if and when established), ex officio;
(7) The Chairman of the State Board of Education, ex officio;
(8) The Chairman of the OPEN/net Committee, ex officio, so long as such person is not a State employee;
(9) The Chairman of the North Carolina Utilities Commission, ex officio;
(10) The Director of the Public Staff of the North Carolina Utilities Commission, ex officio;
(11) The Chairman of the Public Radio Advisory Committee of the North Carolina Agency for Public Telecommunications, ex officio;
(12) The Superintendent of Public Instruction, ex officio;
(13) The President of the University of North Carolina, ex officio;
(14) The President of the Department of Community Colleges, ex officio; and
(15) Two members ex officio who shall rotate from among the remaining heads of departments enumerated in G.S. 143A-11 or G.S. 143B-6, appointed by the Governor.

The 10 at-large members shall serve for terms staggered as follows: four terms shall expire on June 30, 1980; and three terms shall expire on June 30, 1982; and three terms shall expire on June 30, 1984. Thereafter, the members at large shall be appointed for full four-year terms and until their successors are appointed and qualified. In making appointments of members at large, the Governor shall seek to appoint persons from the various geographic areas of the State including both urban and rural areas; persons from various classifications as to sex, race, age, and handicapped persons;

§ 143B-426.9 has a delayed applicability date. See notes.

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and persons who are representatives of the public broadcast, commercial broadcast, nonbroadcast distributive systems and private education communities of the State.

The terms of the ex officio members are coterminous with their respective terms of office. In the event that any of the offices represented on the Board ceases to exist, the successor officer to the designated member shall become an ex officio member of the Board; if there shall be no successor, then the position on the Board shall be filled by a member to be appointed by the Governor from the general public. The ex officio members shall have the right to vote.

The initial members appointed to the Board by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms beginning July 1 of odd-numbered years.

The terms of the rotating ex officio members shall be of one-year duration, and the schedule of rotation is determined by the Governor.

Each State official who serves on the Board may designate a representative of his department, agency or institution to sit in his place on the Board and to exercise fully the official's privileges of membership.

The Secretary of Administration or his designee serves as secretary of the Board.

Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies shall be filled in the same manner as the original appointment.

The Governor may remove any member of the Board from office in accordance with the provisions of G.S. 143B-16.

The Board meets quarterly and at other times at the call of the chairman or upon written request of at least six members.

A majority of the Board members shall constitute a quorum for the transaction of business. (1979, c. 900, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 6-8; 1983 (Reg. Sess., 1984), c. 1116, s. 92; 1995, c. 490, s. 42.)

For this section as applicable until January 1, 1997, see the main volume.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (4). For the applicability of this amendment, see editor's note.

Part 25. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

§ 143B-426.24. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

(a) The Governor may, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, which when established shall be constituted an agency of the State of North Carolina within the Department of Administration. The Board shall create, establish, implement, coordinate and administer a Deferred Compensation Plan for State employees. Until so established, the Board heretofore established pursuant to Executive Order XII dated November 12, 1974, shall continue in effect. Likewise, the Plan heretofore established shall continue until a new plan is established.

(b) **(Applicable until January 1, 1997)** The Board shall consist of seven voting members, as follows:

(1) Three persons shall be appointed by the Governor who shall have experience with taxation, finance and investments, and one of whom shall be a State employee;
(2) One member shall be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives under G.S. 120-121;
(3) One member shall be appointed by the General Assembly upon recommendation of the President of the Senate under G.S. 120-121;
(4) The State Treasurer, ex officio; and
(5) The Secretary of Administration, ex officio, chairman.

(b) **(Applicable January 1, 1997)** The Board shall consist of seven voting members, as follows:

(1) Three persons shall be appointed by the Governor who shall have experience with taxation, finance and investments, and one of whom shall be a State employee;
(2) One member shall be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives under G.S. 120-121;
(3) One member shall be appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate under G.S. 120-121;
(4) The State Treasurer, ex officio; and
(5) The Secretary of Administration, ex officio, chairman.

(c) General Assembly appointments shall serve two year terms. A member shall continue to serve until his successor is duly appointed but a holdover under this provision does not affect the expiration date of the succeeding term. No member of the Board may serve more than three consecutive two year terms.

(d) In case of a vacancy on the Board before the expiration of a member's term, a successor shall be appointed within 30 days of the vacancy for the remainder of the unexpired term by the appropriate official pursuant to subsection (b). Vacancies in legislative appointments shall be filled under G.S. 120-122.

(e) Other than ex officio members, members appointed by the Governor shall serve at his pleasure.

(f) Any ex officio member may designate in writing, filed with the Board, any employee of his department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present in person at such meeting.

(g) It shall be the duty of the Board when established to review all contracts, agreements or arrangements then in force relating to G.S. 147-9.2 and Executive Order XII to include, but not be limited to, such contracts, agreements or arrangements pertaining to the administrative services and the investment of deferred funds under the Plan for the purpose of recommending continuation of or changes to such contracts, agreements or arrangements.

(h) It shall be the duty of the Board to devise a uniform Deferred Compensation Plan for teachers and State employees, which shall include a reasonable number of options to the teacher or employee, for the investment of deferred funds, among which may be life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, pooled investment funds managed by the Board or its designee, or other forms of investment approved by the Board, always in such form as will assure the desired tax treatment of such funds. The Board may alter, revise and modify the Plan from time to time to improve the Plan or to conform to and comply with requirements of State and federal laws and regulations relating to the deferral of compensation of teachers and public employees generally.

(i) The Board is authorized to delegate the performance of such of its administrative duties as it deems appropriate including coordination, administration, and marketing of the Plan to teachers and employees. Prior to entering into any contract with respect to such administrative duties, it shall seek bids, hold public hearings and in general take such steps as are calculated by the Board to obtain competent, efficient and worthy services for the performance of such administrative duties.

(j) The Board may acquire investment vehicles from any company duly authorized to conduct such business in this State or may establish, alter, amend and modify, to the extent it deems necessary or desirable, a trust for the purpose of facilitating the administration, investment and maintenance of assets acquired by the investment of deferred funds. Any assets of such investment vehicles or trusts shall remain solely the property and rights of the State subject only to the claims of the State's general creditors.

(k) Members of the Board, who are not officers or employees of the State, shall receive per diem and necessary travel and subsistence in accordance with the provisions of G.S. 138-5, funded as provided in subsection (m) hereof.

(*l*) All clerical and other services and personnel required by the Board shall be supplied by the Secretary of Administration, funded as provided in subsection (m) hereof.

(m) Investment of deferred funds shall not be unreasonably delayed, and in no case shall the investment of deferred funds be delayed more than 30 days. The Board may accumulate such funds pending investment, and the interest earned on such funds pending investment shall be available to and may be spent in the discretion of the Board only for the reasonable and necessary expenses of the Board. The Secretary of Administration is authorized to prescribe guidelines for the expenditure of such funds by the Board. From time to time as the Board may direct, funds not required for such expenses may be used to defray administrative expenses and fees which would otherwise be required to be borne by teachers and employees who are then participating in the Plan.

(n) A majority of the Board shall constitute a quorum for the transaction of business.

(o) It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein. (1983, c. 559, s. 1; 1991, c. 389, s. 2; 1995, c. 490, s. 40.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is applicable until January 1, 1997. The second version of subsection (b) set out above is applicable January 1, 1997.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (b)(3). For the applicability of this amendment, see editor's note.

Part 26. North Carolina Farmworker Council.

§ 143B-426.25. North Carolina Farmworker Council — creation; membership; meetings.

(a) There is established within the Department of Administration the North Carolina Farmworker Council.

(b) **(Applicable until January 1, 1997)** The North Carolina Farmworker Council shall consist of 13 members as follows:

(1) Four shall be appointed by the Governor.
(2) Two shall be appointed by the Speaker of the House of Representatives.
(3) Two shall be appointed by the Lieutenant Governor.
(4) The Secretary of the Department of Human Resources or the Deputy Secretary of the Department if designated by the Secretary shall serve ex officio.
(5) The Commissioner of Labor or the Deputy Commissioner of the Department if designated by the Commissioner shall serve ex officio.
(6) The Commissioner of Agriculture or the Deputy Commissioner of the Department if designated by the Commissioner shall serve ex officio.
(7) The Chairman of the Employment Security Commission or his designee shall serve ex officio.
(8) The Secretary of Environment, Health, and Natural Resources or his designee shall serve ex officio.

(b) **(Applicable January 1, 1997)** The North Carolina Farmworker Council shall consist of 13 members as follows:

(1) Four shall be appointed by the Governor.
(2) Two shall be appointed by the Speaker of the House of Representatives.
(3) Two shall be appointed by the President Pro Tempore of the Senate.
(4) The Secretary of the Department of Human Resources or the Deputy Secretary of the Department if designated by the Secretary shall serve ex officio.
(5) The Commissioner of Labor or the Deputy Commissioner of the Department if designated by the Commissioner shall serve ex officio.
(6) The Commissioner of Agriculture or the Deputy Commissioner of the Department if designated by the Commissioner shall serve ex officio.
(7) The Chairman of the Employment Security Commission or his designee shall serve ex officio.
(8) The Secretary of Environment, Health, and Natural Resources or his designee shall serve ex officio.

(c) Vacancies in membership of the Council shall be filled by the original appointing authority for the remainder of the unexpired term.

(d) The Governor shall appoint the chairman of the Council. At its first meeting the Council shall select a vice-chairman from its membership and a secretary. The chairman shall preside at all meetings and in his absence the vice-chairman shall act as chairman.

(e) A majority of the membership shall constitute a quorum.

(f) The initial meeting of the Council shall be called by the Governor. Subsequent meetings shall be held upon the call of the chairman or upon the written request of four members. The Council shall meet at least four times per year.

(g) Council members who are members of the General Assembly shall receive subsistence and travel allowances at the rate set forth in G.S. 120-3.1. Council members and ex officio members who are employees of the State of North Carolina shall receive travel allowances at the rate set forth in G.S. 138-6. All other Council members shall receive per diem, subsistence and travel expenses at the rate set forth in G.S. 138-5.

(h) The Department of Administration shall provide necessary clerical equipment and administrative services to the Council, provided the Council may hire and discharge its own staff if it so desires. (1983, c. 923, s. 205; 1987, c. 876, s. 29.1; 1991, c. 130, s. 1; 1995, c. 490, s. 19.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is applicable until January 1, 1997. The second version of subsection (b) set out above is applicable January 1, 1997.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment substituted "President Pro Tempore of the Senate" for "Lieutenant Governor" in subdivision (b)(3). For the applicability of this amendment, see editor's note.

Part 27. North Carolina Board of Science and Technology.

§ 143B-426.31. North Carolina Board of Science and Technology; membership; organization; compensation; staff services.

(a) **(Applicable until January 1, 1997)** The North Carolina Board of Science and Technology consists of the Governor, the Science Advisor to the Governor, and 17 members appointed as follows: the Governor shall appoint one member from the University of North Carolina at Chapel Hill, one member from North Carolina State University at Raleigh, and two members from other components of the University of North Carolina, all nominated by the President of the University of North Carolina; one member from Duke University, nominated by the President of Duke University; one member from a private college or university, other than Duke University, in North Carolina, nominated by the President of the Association of Private Colleges and Universities; one member from

§ 143B-426.31(a) is set out twice. See notes.

the Research Triangle Institute, nominated by the executive committee of the board of that institute; one member from the Microelectronics Center of North Carolina, nominated by the executive committee of the board of that center; one member from the North Carolina Biotechnology Center, nominated by the executive committee of the board of that center; four members from private industry in North Carolina, at least one of whom shall be a professional engineer registered pursuant to Chapter 89C of the General Statutes or a person who holds at least a bachelors degree in engineering from an accredited college or university; and two members from public agencies in North Carolina. Two members shall be appointed by the General Assembly, one shall be appointed upon the recommendation of the President of the Senate, and one shall be appointed upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The nominating authority for any vacancy on the Board among members appointed by the Governor shall submit to the Governor two nominations for each position to be filled, and the persons so nominated shall represent different disciplines.

(a) **(Applicable January 1, 1997)** The North Carolina Board of Science and Technology consists of the Governor, the Science Advisor to the Governor, and 17 members appointed as follows: the Governor shall appoint one member from the University of North Carolina at Chapel Hill, one member from North Carolina State University at Raleigh, and two members from other components of the University of North Carolina, all nominated by the President of the University of North Carolina; one member from Duke University, nominated by the President of Duke University; one member from a private college or university, other than Duke University, in North Carolina, nominated by the President of the Association of Private Colleges and Universities; one member from the Research Triangle Institute, nominated by the executive committee of the board of that institute; one member from the Microelectronics Center of North Carolina, nominated by the executive committee of the board of that center; one member from the North Carolina Biotechnology Center, nominated by the executive committee of the board of that center; four members from private industry in North Carolina, at least one of whom shall be a professional engineer registered pursuant to Chapter 89C of the General Statutes or a person who holds at least a bachelors degree in engineering from an accredited college or university; and two members from public agencies in North Carolina. Two members shall be appointed by the General Assembly, one shall be appointed upon the recommendation of the President Pro Tempore of the Senate, and one shall be appointed upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The nominating authority for any vacancy on the Board among members appointed by the Governor shall submit to the Governor two nominations for each position to be filled, and the persons so nominated shall represent different disciplines.

(b) Members appointed to the Board by the General Assembly shall serve for two-year terms beginning 1 July of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. The two members from public agencies shall serve for terms expiring at the end of the term of the Governor appointing them. The other 13 members appointed to the Board by the Governor shall serve for four-year terms, and until their successors are appointed and qualified. Of those 13 members, six shall serve for terms that expire on 30 June of years that follow by one year those years that are evenly divisible by four, and seven shall serve for terms that expire on 30 June of years that follow by three years those years that are evenly divisible by four. Any appointment to fill a vacancy on the Board created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

(c) The Governor shall serve as chairman of the Board. The vice chairman of the Board shall be designated by the Governor from among the members of the Board. The Science Advisor to the Governor shall serve as executive director of the Board. The Secretary of Administration or his designee shall serve as secretary to the Board.

(d) The Governor may remove any member of the Board from office in accordance with the provisions of G.S. 143B-16.

(e) Members of the Board who are employees of State agencies or institutions shall receive subsistence and travel allowances authorized by G.S. 138-6. Legislative members of the Board shall receive subsistence and travel allowances authorized by G.S. 120-3.1.

(f) A majority of the Board constitutes a quorum for the transaction of business.

(g) The Secretary of Administration shall provide all clerical and other services required by the Board. (1979, c. 668, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 44-46; 1985, c. 757, s. 179(b), (c); 1989, c. 751, s. 8(17); 1991, c. 573, s. 1; 1995, c. 490, s. 46.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is applicable until January 1, 1997. The second version of subsection (a) set out above is applicable January 1, 1997.

Editor's Note. —

Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the next to last sentence of subsection (a). For the applicability of this amendment, see editor's note.

Part 28. Office of the State Controller.

§ 143B-426.39. Powers and duties of the State Controller.

The State Controller shall:

(1) Prescribe, develop, operate, and maintain in accordance with generally accepted principles of governmental accounting, a uniform state accounting system for all state agencies. The system shall be designed to assure compliance with all legal and constitutional requirements including those associated with the receipt and expenditure of, and the accountability for public funds.

(2) On the recommendation of the State Auditor, prescribe and supervise the installation of any changes in the accounting systems of an agency that, in the judgment of the State

Controller, are necessary to secure and maintain internal control and facilitate the recording of accounting data for the purpose of preparing reliable and meaningful statements and reports. The State Controller shall be responsible for seeing that a new system is designed to accumulate information required for the preparation of budget reports and other financial reports.

(3) Maintain complete, accurate and current financial records that set out all revenues, charges against funds, fund and appropriation balances, interfund transfers, outstanding vouchers, and encumbrances for all State funds and other public funds including trust funds and institutional funds available to, encumbered, or expended by each State agency, in a manner consistent with the uniform State accounting system.

(4) Prescribe the uniform classifications of accounts to be used by all State agencies including receipts, expenditures, assets, liabilities, fund types, organization codes, and purposes. The State Controller shall also, after consultation with the Office of State Budget and Management, prescribe a form for the periodic reporting of financial accounts, transactions, and other matters that is compatible with systems and reports required by the State Controller under this section. Additional records, accounts, and accounting systems may be maintained by agencies when required for reporting to funding sources provided prior approval is obtained from the State Controller.

(5) Prescribe the manner in which disbursements of the State agencies shall be made, in accordance with G.S. 143-3.

(6) Operate a central payroll system, in accordance with G.S. 143-3.2 and 143-34.1.

(7) Keep a record of the appropriations, allotments, expenditures, and revenues of each State agency, in accordance with G.S. 143-20.

(8) Make appropriate reconciliations with the balances and accounts kept by the State Treasurer.

(9) Develop, implement, and amend as necessary a uniform statewide cash management plan for all State agencies in accordance with G.S. 147-86.11.

(9a) Implement a statewide accounts receivable program in accordance with Article 6B of Chapter 147 of the General Statutes.

(10) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management each month, a report summarizing by State agency and appropriation or other fund source, the results of financial transactions. This report shall be in the form that will most clearly and accurately set out the current fiscal condition of the State. The State Controller shall also furnish each State agency a report of its transactions by appropriation or other fund source in a form that will clearly and accurately present the fiscal activities and condition of the appropriation or fund source.

(11) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management, at the end of each quarter, a report on the

financial condition and results of operations of the State entity for the period ended. This report shall clearly and accurately present the condition of all State funds and appropriation balances and shall include comments, recommendations, and concerns regarding the fiscal affairs and condition of the State.

(12) Prepare on or before October 31 of each year, a Comprehensive Annual Financial Report of the preceding fiscal year, in accordance with G.S. 143-20.1.

(13) Perform additional functions and duties assigned to the State Controller, within the scope and context of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes.

(14) With respect to State agencies, exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of these agencies. In discharging that responsibility the State Controller may in cooperation with affected State agency heads, do such of the following things as he deems necessary and advisable:

a. Provide for the establishment, management, and operation, through either State ownership or commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:
   1. Central telephone systems and telephone networks;
   2. Teleprocessing systems;
   3. Teletype and facsimile services;
   4. Satellite services;
   5. Closed-circuit TV systems;
   6. Two-way radio systems;
   7. Microwave systems;
   8. Related systems based on telecommunication technologies.

b. With the approval of the Information Technology Council, coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in item "a." of this subdivision.

c. Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.

d. Perform traffic analysis and engineering for all telecommunications services and systems listed in item "a." of this subdivision.

e. Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.

f. Pursuant to G.S. 143-49 and G.S. 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.

g. Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate the review of requests by

State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.
h. Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.
i. Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including but not limited to the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.
j. Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.
k. Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the State Information Processing Services training to users within State agencies in telecommunications technology and systems.
l. Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems; and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.
m. Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this subdivision.

The provisions of this subdivision shall not apply to the Criminal Information Division of the Department of Justice or to the Judicial Information System in the Judicial Department.

(15) Provide cities, counties, and other local governmental units with access to a central telecommunications system or service established under subdivision (14) of this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(16) Establish switched broadband telecommunications services and permit in addition to State agencies, cities, counties, and other local government units, the following organizations and entities to share on a not-for-profit basis:
a. Nonprofit educational institutions;
b. The Microelectronics Center of North Carolina ("MCNC");
c. Research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC, if such research activities relate to health care or education in North Carolina;
d. Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina; or

e. Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North Carolina.

Provided, however, that sharing of the switched broadband telecommunications services by State agencies with entities or organizations in the categories set forth herein shall not cause the State, the Office of State Controller, or the MCNC to be classified as a public utility as that term is defined in G.S. 62-3(23)a.6. Nor shall the State, the Office of State Controller, or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the federal Communications Act of 1934, 47 U.S.C. § 153(h). Provided further, authority to share the switched broadband telecommunications services with the non-State agencies set forth above in subdivision (16)a. through subdivision (16)e. shall terminate one year from the effective date of a tariff that makes the broadband services available to any customer. (1985 (Reg. Sess., 1986), c. 1024, s. 1; 1987, c. 738, s. 59(a)(2); 1989, c. 239, s. 4; 1989 (Reg. Sess., 1990), c. 1024, s. 37; 1991, c. 542, s. 14; 1993, c. 512, s. 2; 1993 (Reg. Sess., 1994), c. 777, s. 1(a).)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 17, 1994, added subdivision (16).

§ 143B-426.39A. Information Highway Grants Advisory Council.

(a) The Information Highway Grants Advisory Council is created within the Office of the State Controller. The Council shall consist of 18 members as follows:

(1) Five members to be appointed by the Governor.

(2) Four members to be appointed by the Speaker of the House of Representatives, at least one of whom shall be a public member.

(3) Four members to be appointed by the President Pro Tempore of the Senate, at least one of whom shall be a public member.

(4) One representative from the Department of Public Instruction to be designated by the Superintendent of Public Instruction.

(5) One representative from the Department of Community Colleges to be designated by the President of the Community College System.

(6) One representative from The University of North Carolina to be designated by the President of The University of North Carolina.

(7) One representative from the Office of the State Controller, to be designated by the State Controller.

(8) One representative from the North Carolina School of Science and Mathematics, to designated by the Board of Trustees.

Members of the Council shall be appointed by September 1, 1994, and shall serve two-year terms. The Speaker of the House of

Representatives and the President Pro Tempore of the Senate shall each designate a cochair from among the members of the General Assembly they appoint to the Council. Vacancies on the Council shall be filled in the same manner as the original appointment.

The members of the Council shall not receive compensation but may receive subsistence and travel in accordance with G.S. 120-3.1, G.S. 138-5, and G.S. 138-6 as appropriate.

(b) The Information Highway Grants Advisory Council shall meet as often as needed to transact its business. The first meeting of the Council shall be called by the cochairs. A majority of the members of the Council shall constitute a quorum. The Office of the State Controller shall provide staff and space to the Council.

(c) The Information Highway Grants Advisory Council shall advise the Governor, the General Assembly, and Office of the State Controller on matters pertaining to the North Carolina Information Highway. The Information Highway Grants Advisory Council shall, by September 30, 1994, develop criteria for evaluating grant applications under this section. The Information Highway Grants Advisory Council shall evaluate the grant applications and make recommendations to the State Controller regarding grant recipients by December 1, 1994. The State Controller shall not award grants before December 15, 1994. The State Controller shall notify the Information Highway Grants Advisory Council as to whom the intended grant recipients are 15 days prior to awarding the grants. (1993 (Reg. Sess., 1994), c. 769, s. 10.1(c)-(e); 1995, c. 509, s. 99.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 10.1 (c) to (e) have been codified as this section at the direction of the Revisor of Statutes.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 10.1 (a) and (b) provide: "(a) The General Assembly encourages the concept of a switched broadband information highway run by private sector industry, where the State could be a customer, that would (i) enhance the delivery of education, health care, and other services to all of the people of North Carolina and (ii) promote economic development throughout all the counties of North Carolina.

"(b) Seven million dollars ($7,000,000) in nonrecurring funds are appropriated in this act to the Office of the State Controller for the North Carolina Information Highway. These funds shall be used to provide one-time grants not to exceed one hundred thousand dollars ($100,000) per site to qualified State or local governmental entities who establish Information Highway sites. To qualify for a grant, a State or local governmental entity must: (i) file an application with the Office of State Controller by November 1, 1994, (ii) present a plan for the use of the grant funds and for the use of the Information Highway site, and (iii) demonstrate its willingness and ability to pay all of the expenses associated with the use and operations of the site. The State Controller shall administer the grants program established by this section after consulting with and receiving the recommendations of the Information Highway Grants Advisory Council."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 10.1 (f) to (i) provide: "(f) The Information Highway Grants Advisory Council and the State Controller shall report to the 1995 General Assembly regarding the grants program for the North Carolina Information Highway. Upon request, the Information Highway Grants Advisory Council and State Controller shall report to the Joint Legislative Education Oversight Committee and to any other legislative oversight committees.

"(g) Those State and local entities that have expended monies prior to June 1, 1994, on Information Highway equipment shall receive preferential consideration in expenditures pursuant to this section.

"(h) It is the intent of the General Assembly that those programs receiving grants for the North Carolina Information Highway be reviewed after a three year period to determine the benefits of the programs. No one shall obligate the State to pay any nonrecurring or recurring costs related to the North Carolina Information Highway except to the extent that funds are appropriated by the General Assembly specifically for that purpose. No one shall obligate the State to pay any recurring costs related to the North Carolina Information Highway beyond the end of the fiscal period for which funds are appropriated for that purpose.

"In no event shall anyone obligate the State to pay recurring operating expenses related to the North Carolina Information Highway for any non-State entity.

"(i) Notwithstanding any other law, funds in the amount of four million one hundred thousand dollars ($4,100,000) appropriated to the Office of the State Controller in Chapter 561 of the 1993 Session Laws for the 1993-94 fiscal year for the State Telecommunications System shall revert to the General Fund."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, deleted "the" preceding "The" following "representative from" in subdivision (a)(6); substituted "members" for "member" in the second sentence of the next to last paragraph of subsection (a); and substituted "15" for "fifteen" in the last sentence of subsection (c).

ARTICLE 10.

Department of Commerce.

Part 1. General Provisions.

§ 143B-429. Department of Commerce — duties.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 28.21, as amended by Session Laws 1995, c. 507, s. 27.3, creates the Piedmont Sports and Entertainment Study Commission, to study the need for and feasibility of creating regional sports and entertainment facilities to serve the Piedmont area of the State, and to submit a report to the 1995 General Assembly, Regular Session 1996.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769 s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

§ 143B-431. Department of Commerce — functions.

(a) The functions of the Department of Commerce, except as otherwise expressly provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

(1) All of the executive functions of the State in relation to economic development including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the promotion of and assistance in the orderly development of North Carolina counties and communities, the promotion and growth of the travel and tourism industries, the development of our State's ports, energy resource management and energy policy development;

(2) All functions, powers, duties and obligations heretofore vested in an agency enumerated in Article 15 of Chapter 143A, to wit:

  a. The State Board of Alcoholic Control,
  b. The North Carolina Utilities Commission,
  c. The Employment Security Commission,
  d. The North Carolina Industrial Commission,
  e. State Banking Commission and the Commissioner of Banks,
  f. Savings and Loan Association Division,
  g. The State Savings Institutions Commission,
  h. Credit Union Commission,
  i. The North Carolina Milk Commission,
  j. The North Carolina Mutual Burial Association Commission,
  k. The North Carolina Rural Electrification Authority,
  l. The North Carolina State Ports Authority, all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and,

(3) All other functions, powers, duties and obligations as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State. Any agency transferred to the Department of Commerce by a Type II transfer, as defined by G.S. 143A-6, shall have the authority to employ, direct and supervise professional and technical personnel, and such agencies shall not be accountable to the Secretary of Commerce in their exercise of quasi-judicial powers authorized by statute, notwithstanding any other provisions of this Chapter, provided that the authority of the North Carolina State Ports Authority to employ, direct and supervise personnel shall be as provided in Part 10 of this Article.

(b) The Department of Commerce is authorized to establish and provide for the operation of North Carolina nonprofit corporations to achieve the purpose of aiding the development of small businesses and to achieve the purposes of the United States Small Business Administration's 504 Certified Development Company Program.

(c) The Department of Commerce shall have the following powers and duties with respect to local planning assistance:

(1) To provide planning assistance to municipalities and counties and joint and regional planning boards established by two or more governmental units in the solution of their local planning problems. Planning assistance as used in this section shall consist of making population, economic, land use, traffic, and parking studies and developing plans based thereon to guide public and private development and other planning work of a similar nature. Planning assistance shall also include the preparation of proposed subdivision regulations, zoning ordinances, capital budgets, and similar measures that may be recommended for the implementation of such plans. The term planning assistance shall not be construed to include the providing of plans for specific public works.

(2) To receive and expend federal and other funds for planning assistance to municipalities and counties and to joint and regional planning boards, and to enter into contracts with the federal government, municipalities, counties, or joint and regional planning boards with reference thereto.

(3) To perform planning assistance, either through the staff of the Department or through acceptable contractual arrangements with other qualified State agencies or institutions, local planning agencies, or with private professional organizations or individuals.

(4) To assume full responsibility for the proper execution of a planning program for which a grant of State or federal funds has been made and for carrying out the terms of a federal grant contract.

(5) To cooperate with municipal, county, joint and regional planning boards, and federal agencies for the purpose of aiding and encouraging an orderly, coordinated development of the State.

(6) To establish and conduct, either with its own staff or through contractual arrangements with institutions of higher education, State agencies, or private agencies, training programs for those employed or to be employed in community development activities.

(d) The Department of Commerce, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual and may comply with the terms, conditions, and limitations of such grants in order to accomplish the Department's purposes. Grant funds shall be expended pursuant to the Executive Budget Act. In addition, the Department shall have the following powers and duties with respect to its duties in administering federal programs:

(1) To negotiate, collect, and pay reasonable fees and charges regarding the making or servicing of grants, loans, or other evidences of indebtedness.

(2) To establish and revise by regulation, in accordance with Chapter 150B of the General Statutes, schedules of reasonable rates, fees, or charges for services rendered, including but not limited to, reasonable fees or charges for servicing applications. Schedules of rates, fees, or charges may vary according to classes of service, and different schedules may be adopted for public entities, nonprofit entities, private for-profit entities, and individuals.

(3) To pledge current and future federal fund appropriations to the State from the Community Development Block Grant (CDBG) program for use as loan guarantees in accordance with the provisions of the Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700, et seq., authorized by the Housing and Community Development Act of 1974 and amendments thereto. The Department may enter into loan guarantee agreements with authorized State and federal agencies and other necessary parties in order to carry out its duties under this subdivision. In making loan guarantees authorized under this subdivision, the Department shall ensure that apportionment of the risks involved in pledging future federal funds in accordance with State policies and priorities for financial support of categories of assistance is made primarily against the category from which the loan guarantee originally derived. A pledge of future CDBG funds under this subdivision is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subdivision does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes, nor may pledges exceed twice the amount of annual CDBG funds.

Prior to issuing a Section 108 Loan Guarantee agreement, the Department of Commerce must make the following findings:

a. The minimum size of the Section 108 Loan Guarantee is seven hundred fifty thousand dollars ($750,000) and the maximum size is five million dollars ($5,000,000) per project.
b. The Section 108 Loan Guarantee cannot constitute more than fifty percent (50%) of total project costs.
c. The project has twenty-five percent (25%) equity from the corporation, partnership, or sponsoring party.
d. The project has the personal guarantee of any person owning ten percent (10%) or more of the corporation, partnership, or sponsoring entity. Collateral on the loan must be sufficient to cover outstanding debt obligations.
e. The project has sufficient cash flow from operations for debt service to repay the Section 108 loan.
f. The project meets all underwriting and eligibility requirements of the North Carolina Section 108 Guarantee Program Guidelines and of the Department of Housing and Urban Development regulations, except that projects involving hotels, motels, private recreational facilities, private entertainment facilities, and convention centers are ineligible for Section 108 loan guarantees.

The Department shall create a loan loss reserve fund as additional security for loans guaranteed under this section and may deposit federal program income or other funds governed by this section into the loan loss reserve fund. The Department shall maintain a balance in the reserve fund of no less than ten percent

(10%) of the outstanding indebtedness secured by Section 108 loan guarantees. (1977, c. 198, s. 1; 1987, c. 214; 1989, c. 76, s. 25; c. 751, s. 2; 1991, c. 689, s. 153; 1991 (Reg. Sess., 1992), c. 959, s. 49; 1995, c. 310, s. 1.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, in subsection (d) added subdivision (d)(3), and the last paragraph of the subsection following subdivision (d)(3).

Part 2. Economic Development.

§ 143B-434. Economic Development Board — creation, duties, membership.

(a) Creation and Duties. — There is created within the Department of Commerce an Economic Development Board. The Board shall have the following duties:

(1) To provide economic and community development planning for the State.

(2) To recommend economic development policy to the Secretary of Commerce, the General Assembly, and the Governor. The recommendations may cover the following issues as well as any other economic development policy issues:

  a. Use of tax abatements and other incentives to motivate economic development.

  b. Definition of which specific activities and programs should be considered economic development activities and programs for the purpose of receiving State appropriations.

  c. The role of institutions of higher education in economic development.

  d. The use of State funds to leverage private nonprofit economic development initiatives.

  e. The linkage of workforce preparedness activities and initiatives, and economic development planning.

(3) To recommend annually to the Governor biennial and annual appropriations for economic development programs.

(4) To develop and update annually a comprehensive strategic economic development plan, as provided in G.S. 143B-434.1.

The Board shall meet at least quarterly at the call of its chair or the Secretary. Each quarter the Secretary shall report to the Board on the program and progress of this State's economic development.

(b) Membership. — The Economic Development Board shall consist of 36 members. The Secretary of Commerce shall serve ex officio as a member and as the secretary of the Economic Development Board. Four members of the House of Representatives appointed by the Speaker of the House of Representatives, four members of the Senate appointed by the President Pro Tempore of the Senate, the President of The University of North Carolina, or designee, the President of the North Carolina Community College System, or designee, the Secretary of State, and the President of the Senate (or the designee of the President of the Senate), shall serve as members of the Board. The Governor shall appoint the remaining 23 members of the Board, provided that effective with the terms beginning July

1, 1997, one of those appointees shall be a representative of a nonprofit organization involved in economic development and two of those appointees shall be county economic development representatives. The Governor shall designate a chair and a vice-chair from among the members of the Board. Appointments to the Board made by the Governor for terms beginning July 1, 1997, and appointments to the Board made by the Speaker of the House of Representatives and the President Pro Tempore of the Senate for terms beginning July 9, 1993, should reflect the ethnic and gender diversity of the State as nearly as practical.

The initial appointments to the Board shall be for terms beginning on July 9, 1993. Of the initial appointments made by the Governor, the terms shall expire July 1, 1997. Of the initial appointments made by the Speaker of the House of Representatives and by the President Pro Tempore of the Senate two appointments of each shall be designated to expire on July 1, 1995; the remaining terms shall expire July 1, 1997. Thereafter, all appointments shall be for a term of four years.

The appointing officer shall make a replacement appointment to serve for the unexpired term in the case of a vacancy.

The members of the Economic Development Board shall receive per diem and necessary travel and subsistence expenses payable to members of State Boards and agencies generally pursuant to G.S. 138-5 and [G.S.] 138-6, as the case may be. The members of the Economic Development Board who are members of the General Assembly shall not receive per diem but shall receive necessary travel and subsistence expenses at rates prescribed by G.S. 120-3.1.

(c) Advice and Staff. — The Secretaries of Administration, State, and Transportation, the Commissioners of Agriculture and Labor, and the State Treasurer, or their designees, shall advise the Board on economic development activities within the responsibility of their respective departments. Clerical and professional staff support to the Economic Development Board shall be provided by an Interagency Economic Development Group composed of representatives of the following State agencies:

(1) The Department of Administration.
(2) The Department of Agriculture.
(3) The Employment Security Commission.
(4) The Department of Labor.
(5) The Department of Transportation.

The Department of Commerce shall have the responsibility for coordinating the activities and efforts of the Interagency Economic Development Group. (1977, c. 198, s. 1; 1981, c. 47, s. 6; 1981 (Reg. Sess., 1982), c. 1191, s. 18; 1983, c. 717, s. 83; 1989, c. 751, ss. 7(29), 9(c); 1991 (Reg. Sess., 1992), c. 959, s. 85; c. 1038, s. 22; 1993, c. 321, s. 313(a); c. 561, s. 12; 1993 (Reg. Sess., 1994), c. 773, s. 15.1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, in the first paragraph of subsection (b), in the third sentence, substituted "President of the Senate (or the designee of the President of the Senate)" for "Lieutenant Governor".

§ 143B-437A. Industrial Development Fund.

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 28.1(b) amends Session Laws 1993, c. 561, s. 104.1(a), noted in the main pamphlet, to refer to the 1994-95 fiscal year instead of the 1993-94 fiscal year.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 28.1(c) provides: "Subsections (a1) and (a2) of Section 104.1 of Chapter 561 of the 1993 Session laws apply to this section [s. 28.1]."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Part 8. Energy Division.

§ 143B-450.1. Authority to collect data; administration and enforcement; confidentiality.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 10. North Carolina State Ports Authority.

§ 143B-452. (Applicable January 1, 1997) Creation of Authority — membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.

The North Carolina State Ports Authority is hereby created. It shall be governed by a board composed of nine members and hereby designated as the Authority. Effective July 1, 1983, it shall be governed by a board composed of 11 members and hereby designated as the Authority. The General Assembly suggests and recommends that no person be appointed to the Authority who is domiciled in the district of the North Carolina House of Representatives or the North Carolina Senate in which a State port is located. The Governor shall appoint seven members to the Authority, and the General Assembly shall appoint two members of the Authority. Effective July 1, 1983, the Authority shall consist of seven persons appointed by the Governor, and four persons appointed by the General Assembly. Effective July 1, 1989, the Governor shall appoint six members to the Authority, in addition to the Secretary of Commerce, who shall serve as a voting member of the Authority by virtue of his office. The

§ 143B-452 has a delayed applicability date. See notes.

Secretary of Commerce shall fill the first vacancy occurring after July 1, 1989, in a position on the Authority over which the Governor has appointive power.

The initial appointments by the Governor shall be made on or after March 8, 1977, two terms to expire July 1, 1979; two terms to expire July 1, 1981; and three terms to expire July 1, 1983. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of six years.

To stagger further the terms of members:

(1) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1991, one member shall be appointed to a term of five years, to expire on June 30, 1996; the other member shall be appointed for a term of six years, to expire on June 30, 1997;

(2) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1993, one member shall be appointed to a term of five years, to expire on June 30, 1998; the other member shall be appointed to a term of six years, to expire on June 30, 1999;

(3) Of those members appointed by the Governor to replace the members whose terms expire on July 1, 1995, one member shall be appointed to a term of five years, to expire on June 30, 2000; the other member shall be appointed to a term of six years, to expire on June 30, 2001.

Thereafter, at the expiration of each stipulated term of office all appointments made by the governor shall be for a term of six years.

The members of the Authority appointed by the Governor shall be selected from the State-at-large and insofar as practicable shall represent each section of the State in all of the business, agriculture, and industrial interests of the State. Any vacancy occurring in the membership of the Authority appointed by the Governor shall be filled by the Governor for the unexpired term. The Governor may remove a member appointed by the Governor only for reasons provided by G.S. 143B-13.

The General Assembly shall appoint two persons to serve terms expiring June 30, 1983. The General Assembly shall appoint four persons to serve terms beginning July 1, 1983, to serve until June 30, 1985, and successors shall serve for two-year terms. Of the two appointments to be made in 1982, one shall be made upon the recommendation of the Speaker, and one shall be made upon the recommendation of the President of the Senate. Of the four appointments made in 1983 and biennially thereafter, two shall be made upon the recommendation of the President of the Senate, and two shall be made upon the recommendation of the Speaker. To stagger further the terms of members:

(1) Of the members appointed upon the recommendation of the Speaker to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993;

(2) Of the members appointed upon the recommendation of the President of the Senate to replace the members whose terms expire on June 30, 1991, one member shall be

§ 143B-452 has a delayed applicability date. See notes.

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appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993. Successors to these persons for terms beginning on or after January 1, 1997, shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

Thereafter, at the expiration of each stipulated term of office all appointments made by the General Assembly shall be for terms of two years.

Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Members appointed by the General Assembly may be removed only for reasons provided by G. S. 143B-13.

The Governor shall appoint from the members of the Authority the chairman and vice-chairman of the Authority. The members of the Authority shall appoint a treasurer and secretary of the Authority.

The Authority shall meet once in each 60 days at such regular meeting time as the Authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority shall not be entitled to compensation for their services, but they shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5. (1945, c. 1097, s. 1; 1949, c. 892, s. 1; 1953, c. 191, s. 1; 1959, c. 523, s. 1; 1961, c. 242; 1975, c. 716, s. 2; 1977, c. 65, s. 1; c. 198, s. 9; 1981 (Reg. Sess., 1982), c. 1191, ss. 69-71; 1983, c. 717, s. 2.1; 1989, c. 273, s. 2; c. 751, s. 8(25); 1989 (Reg. Sess., 1990), c. 1072; 1991 (Reg. Sess., 1992), c. 959, s. 70; 1995, c. 490, s. 54.)

For this section as applicable until January 1, 1997, see the main volume.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added the last sentence in the subdivision (2), following the sixth paragraph. For the applicability of this amendment, see editor's note.

§ 143B-456. Issuance of bonds and notes.

(a) As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance or operation of any facility, building, structure or any other matter or thing which the Authority is authorized to acquire, construct, equip, maintain, or operate, all or any of them, including authorized special user projects, the Authority is hereby authorized, at one time or from time to time, to borrow money and in evidence thereof to issue bonds, notes and other obligations of the Authority as provided in this Part. Bonds, notes and other obligations may also be issued to (i) establish such reserves as the Authority may determine to be desirable including, without limitation, a debt service reserve fund, and (ii) provide for interest during the estimated period of construction and for a reasonable period thereafter and to provide for working capital.

The principal of and the interest on such bonds or notes shall be payable solely from the funds herein provided for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues, income or assets of the Authority. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Authority at such price or prices and under such terms and conditions as may be determined by the Authority. Any such bonds or notes shall bear interest at such rate or rates, including variable rates, as may be determined by the Authority. Such bonds or notes shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the Authority.

(b) Prior to the sale and delivery of any bonds or notes by the Authority, the Governor shall approve the general purposes of and the general security provisions for any such bonds or notes. Such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Authority shall determine. Bonds or notes may be issued under the provisions of this Part without obtaining, except as otherwise expressly provided in this Part, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Part and the provisions of the resolution authorizing the issuance of such bonds or notes or the trust agreement securing the same. Prior to taking any action under this subsection, the Governor may consult with the Advisory Budget Commission.

(c) In the discretion of the Authority any obligations issued under the provisions of this Part may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State and, in the case of an authorized special user project, a deed of trust of which the trustee may be an individual who is a resident of the State. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of obligations, revenues or other money under this Part to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. The pledge of any assets, income or revenues of the Authority to the payment of the principal of or the interest on any obligations of the Authority shall be valid and binding from the time when the pledge is made and any such assets, income or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof.

(d) The resolution authorizing any obligations or the trust agreement securing the same may provide that any moneys held pursuant thereto may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Part and such resolution or trust agreement may provide. Any such moneys or any other moneys of the Authority may be invested as provided in G.S. 159-30 or any successor provision thereof.

(e) Obligations issued under the provisions of this Part are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such obligations are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State is now or may hereafter be authorized by law.

(f) The Authority is hereby authorized to provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which shall have been issued under the provisions of this Part, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and, if deemed advisable by the Authority, for any corporate purpose of the Authority. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same shall be governed by the provisions of this Part which relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

Refunding obligations may be sold or exchanged for outstanding obligations issued under this Part and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations.

(g) Any obligations issued by the Authority under the provisions of this Part shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the obligations is not subject to taxation as income.

(h) Obligations issued under the provisions of this Part shall not be deemed to constitute a debt, liability or obligation of the State or of any other public body in the State secured by a pledge of the faith and credit of the State or of any other public body in the State, respectively, but shall be payable solely from the revenues, income or assets of the Authority pledged thereto. Each obligation issued under this Part shall contain on the face thereof a statement to the effect that the Authority shall not be obligated to pay the same or the interest thereon except from the revenues, income or assets pledged therefor and that neither the faith and credit nor the taxing power of the State or of any other public body in the State is pledged to the payment of the principal of or the interest on such obligation. (1945, c. 1097, s. 4; 1975, c. 716, s. 2; 1977, c. 198, s. 9; 1979, c. 159, s. 4; 1981, c. 856, s. 1; 1981 (Reg. Sess., 1982), c. 1181, s. 1; 1985 (Reg. Sess., 1986), c. 955, ss. 104, 105; 1987, c. 275, s. 3; 1995, c. 46, s. 16.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995 and applicable to obligations issued on or after that date, in the first sentence of subsection (g), deleted "their transfer and the income therefrom (including any profit made on the sale thereof)" following "Part" and added "income taxes on the gain from the transfer of the obligations, and franchise taxes" to the end, and added the last sentence.

§ 143B-461. Jurisdiction of the Authority; application of Chapter 20; appointment and authority of special police.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 13. Mutual Burial Associations.

§ 143B-472.3. Requirements as to rules and bylaws.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.6. Unlawful to operate without written authority of Commission.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.10. Penalty for failure to operate in substantial compliance with bylaws.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.11. Penalty for wrongfully inducing person to change membership.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.12. Penalty for making false and fraudulent entries.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.13. Accepting applications without collecting fee and first assessment.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.15. Free services; failure to make proper assessments, etc., made a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.19. Making false or fraudulent statement a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

§ 143B-474. Department of Crime Control and Public Safety — duties.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 22.1, provides that of the funds appropriated to the Department of Crime Control and Public Safety for the 1994-95 fiscal year, two hundred thirty thousand seven hundred ninety dollars ($230,790) shall be allocated to implement a pilot program to provide assistance to communities in the development of community policing programs in high crime areas. The Secretary shall report to the General Assembly on this program by March 1, 1995.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for the ativities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 143B-475.1. Deferred prosecution, community service restitution, and volunteer program.

(a) The Department of Crime Control and Public Safety may conduct a deferred prosecution, community service restitution, and volunteer program for youthful and adult offenders. The Secretary of Crime Control and Public Safety may assign one or more coordinators to each district court district as defined in G.S. 7A-133 to assure and report to the Court the offender's compliance with the requirements of the program. The appointment of each coordinator shall be made in consultation with and is subject to the approval of the chief district court judge in the district to which the coordinator is assigned. Each county must provide office space in the courthouse or other convenient place, for the use of each coordinator assigned to that county.

(b) Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a fee of one hundred dollars ($100.00) shall be paid by all persons who participate in the program or receive services from the program staff. If the person is convicted in a court in this State, the fee must be paid to the clerk of court in the county in which he is convicted. If the person is participating in the program as a result of a deferred prosecution or similar program, the fee must be paid to the clerk of court in the county in which the agreement is filed. Persons participating in the program for any other reason must pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee must be paid in full within two weeks from the date the person is ordered to perform the community service, and before he begins his community service, except that:

(1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service

before he pays the fee by the court in which he is convicted; or

(2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin his community service before the fee is paid by the official or agency representing the State in the agreement.

Fees collected pursuant to this subsection shall be deposited in the General Fund.

(c) The Secretary is authorized to designate the same person to serve as a coordinator under this section and under G.S. 20-179.4.

(d) A person is not liable for damages for any injury or loss sustained by an individual performing community or reparation service under this section unless the injury is caused by the person's gross negligence or intentional wrongdoing. As used in this subsection, "person" includes any governmental unit or agency, nonprofit corporation, or other nonprofit agency that is supervising the individual, or for whom the individual is performing community service work, as well as any person employed by the agency or corporation while acting in the scope and course of the person's employment. This subsection does not affect the immunity from civil liability in tort available to local governmental units or agencies. Notice of the provisions of this subsection must be furnished to the individual at the time of assignment of community service work by the community service coordinator.

(e) In order to maximize the efficiency and effectiveness of the community service program, (i) beginning September 1, 1995, community service program districts shall have the same boundaries as the district court districts established in G.S. 7A-133 and (ii) beginning with persons hired on or after September 1, 1995, all community service program district supervisors employed by the Department of Crime Control and Public Safety to supervise each of the community service program districts shall reside in the district in which the supervisor works. (1983 (Reg. Sess., 1984), c. 1034, s. 102; 1985, c. 451; 1985 (Reg. Sess., 1986), c. 1012, s. 4; 1987 (Reg. Sess., 1988), c. 1037, s. 118; 1989, c. 752, s. 109; 1995, c. 330, s. 2; c. 507, s. 20(a).)

Editor's Note. — Session Laws 1994, Extra Session, c. 24, s. 38 provides for the Administrative Office of the Courts, in consultation with the North Carolina Conference of District Attorneys, to study the problem of underutilization of the deferred prosecution program established in this section and recommend methods for encouraging greater use of the program across the State, and to report to the 1995 General Assembly.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1994, Extra Session, c. 24, s. 71 is a severability clause.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — Session Laws 1995, c. 330, s. 2, effective June 26, 1995, added subsection (d).

Session Laws 1995, c. 507, s. 20(a), effective July 28, 1995, added subsection (e).

Part 5A. North Carolina Center for Missing Persons.

§ 143B-499.6. Improper release of information; penalty.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1995

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1995 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

November 1, 1996

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Michael F. Easley

Attorney General of North Carolina